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A Treatise

ON THE

LAW RELATING TO BANKERS

AND

BANKING COMPANIES,

WITH AN

APPENDIX CONTAINING THE MOST IMPORTANT STATUTES IN FORCE RELATING THERETO,

BY THE LATE

JAMES GRANT, Esq.,

Of the Middle Temple; Barrister-at-Law; Author of "The Law of Corporations."

SECOND AND THIRD EDITIONS

BY THE LATE

R. A. FISHER, Esq.,

Barrister-at-Law; Author of "Fisher's Digest."

Fifth Edition

BY

CLAUDE C. M. PLUMPTRE, Esq.,

Of the Middle Temple; Barrister-at-Law; Middle Temple Common Law Student, Hilary Term, 1877.

ASSISTED BY

J. K. MACKAY, Esq.,

Of the Middle Temple and Western Circuit; Barrister-at-Law.

LONDON:

BUTTERWORTH & Co., 7, FLEET STREET, E.C.

Law Publishers.

1897.

LONDON : PRINTED BY SHAW AND SONS, FETTER LANE AND CRANE COURT, E.C.

PREFACE TO THE FIFTH EDITION.

SINCE the publication of the last Edition of this Work, many cases have been decided, and various Acts of Parliament passed affecting, directly or indirectly, the law relating to Bankers and Banking Companies. It will, it is hoped, be found that the necessary alterations and additions to the text, as it then stood, have been sufficiently noted and discussed in the present Edition. The chapters dealing with Deposits to Secure Advances, Joint Stock Companies, Bankruptcy and Bills of Sale, have been to a great extent re-written and they will, it is believed, prove to be somewhat more comprehensive than has hitherto been the case.

Considerable difficulty has been experienced in determining the extent to which it was expedient to incorporate into the text, the Bills of Exchange Act, 1882, and to deal with the matters therein treated. In a sense, it may no doubt be said, the whole of the law relating to Bills of Exchange is a matter of importance to the Banking Community, and should be fully discussed in a Work professing to deal with Banking Law. On the other hand, it would have been manifestly impossible to discuss in detail the various sections of so lengthy an Act without unduly increasing the size of the present volume. A compromise of some kind had to be made, and it will be found that those sections which seem more especially to affect bankers are referred to and, where necessary, commented upon in the text, whilst the Act itself is set out *in extenso* in the Appendix.

The Bankers' Books Evidence Act is in the present Edition dealt with in a separate chapter.

It will be seen that the Index has been considerably enlarged, and references to contemporaneous reports inserted in the Table of Cases. It is hoped that by these means the utility of the Book will have been increased.

In conclusion the Editor desires to acknowledge the assistance kindly rendered him by Mr. C. LACEY SMITH, and Mr. J. K. MACKAY, both of the Middle Temple.

CLAUDE C. M. PLUMPTRE.

5, PUMP COURT, TEMPLE,
February, 1897.

PREFACE TO THE THIRD EDITION.

MY former Edition of this Work being out of print, and a new Edition being asked for, I have undertaken its preparation at the particular request of the Publishers.

In fulfilling the task thus entrusted to me, I have endeavoured to add to the acknowledged utility of the original Work, by eliminating much matter that has become obsolete or immaterial, and by presenting the existing Law of Bankers and Banking Companies, either affected by legislation, or developed by the decisions of the Courts, to the time of publication. Some chapters which were inconveniently long, or unconnected in subject, have been sub-divided or re-aranged, and others introduced.

I have made a liberal use of Mr. Morse's well-written (American) "Treatise on Banks and Banking," to illustrate or confirm propositions advanced in Mr. Grant's Work, which is but the reciprocation of the compliment paid by Mr. Morse to his predecessor or pioneer in the path of Legal Banking Literature. With the view of extending the professional value and popularity of the Work, the existing statutory enactments of the United Kingdom relating to Bankers, Bank Notes, and Banking Companies have been carefully collected, and are chronologically grouped together in the Appendix.

R. A. FISHER.

3, ESSEX COURT, TEMPLE,
22nd September, 1873.

PREFACE TO THE FIRST EDITION.

THESE pages are the result of an endeavour to compile the Law relating to the business of Banking, as gathered as well from Statutes as from the decisions at Common Law, in Equity, and in Bankruptcy. A work on such a plan, if properly executed, seems to be wanting, and the Author trusts that his attempt to supply the void will not prove wholly unacceptable to the class of persons for whose use it is principally designed—the professional advisers of the great Banking interests of this country. The first duty, it is conceived, of any one who deals with a subject of so great importance, and of such general interest, is to aim solely and entirely, to the exclusion of all other purposes, at practical utility; accordingly from his book the Author has carefully excluded all ambitious attempts at scientific disquisition: the endeavour has been not to speculate how the Law might be improved, not to lay down what it ought to be, but what it is; so that every one, whether concerned for a person carrying on the business of Banking solely, or in a Common Law partnership, whether a shareholder, or a director in a Banking Copartnership, under Statute 7 Geo. 4, c. 46, or in a Joint Stock Company under Statute 7 & 8 Vict. c. 113, might find here the Law, so far as it has hitherto been prescribed by statutory enactment, or developed,

ascertained and explained by judicial decisions, clearly, accurately and usefully stated. In this view, the plan has been followed of placing before the reader not merely statements of the dry points of Law, which were decided in the cases collected; but, as a rule, a summary of the principal facts, and occasionally of the arguments urged before the Court, together with the main grounds on which the judgment proceeded, is also presented. By these means, and by the endeavour to lay down no position or principle unaccompanied by examples to illustrate its application and effect, it has been hoped to provide facilities, in a compendious form, for the solution of every question that can arise, provided such question, in its nature, falls within any of the classes of questions which have already passed into *res judicatæ*. By these means, at any rate, it may be hoped that a person who consults this Work, in order to know what are his rights or liabilities, and what the proper course of conduct in any given set of circumstances, will be enabled readily to observe and to decide whether the principles and rules stated under the head to which his difficulty belongs, have been applied to, or deduced from, circumstances the same as, or analogous to, those of his particular case, and whether the reasons assigned by the Court meet the difficulty and govern the case.

In order to render the Treatise more widely available for every-day reference, the rules, suggestions, cautions, &c., for the conduct of Bankers, which the Author has thought it desirable to interpose, while they have been immediately derived, in all cases, from the observations of the Judges in Law and in Equity, have been—as it is hoped will be

found—as much as possible expressed in the language of business, divested of legal technicalities, and adapted for the probable requirements of practical men.

* * * * *

With respect to those comparatively new modes of carrying on the business of Banking, the Banking Copartnerships, and Joint Stock Banking Companies, much attention has been paid to place before the reader the Law relating to them in as clear a light as possible; the subject of directors' power and liabilities, civil and criminal, the rights and liabilities, and remedies of shareholders, as involved on the Bankruptcy or Winding-up of these Bodies, and also generally, it is hoped, will be found explained in as satisfactory a manner as the present state of the Law admits of.

The subject of Colonial Banks has not been omitted, and there is subjoined a Summary View of the Law relating to Savings' Banks.

JAMES GRANT.

MIDDLE TEMPLE,
November 18, 1856.

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Page 19, note (*d*) *Scholfield* v. *Londesborough*, affirmed (1896), A. C. 514.

Pages 23, note (*c*) and 304, note (*a*), *Clutton & Co.* v. *Attenborough*, affirmed (1897), A. C. 90.

Page 72, note (*b*), *add Lacave* v. *Crédit Lyonnais* (1897), 1 Q. B. 148.

Page 76, note (*e*), *add Blumberg* v. *Life Interests and Reversionary Securities Corporation* (1897), 1 Ch. 171.

Page 76, note (*d*), *for Owen* v. *Hale read Cohen* v. *Hale.*

Pages 161, note (*i*), 162, note (*b*), and 566, notes (*c*) and (*d*), *add Hobson* v. *Gorringe* (1897), 1 Ch. 182.

Page 295, note (*d*), *for Watkin* v. *Campbell read Gwatkin* v. *Campbell.*

Page 458, note (*a*), *for Ex parte Trading Company read Esparto Trading Company, In re.*

Pages 516, note (*a*), and 519, note (*d*), *In re Clarke*, add (1896), 2 Q. B. 476.

Page 520, note (*a*), *In re Leonard add* (1896), 1 Q. B. 473.

Page 526, 2nd line of note, *for* "*aliter*" *read* "also."

Page 531, as to meaning of word "creditor" within section 48 of the Bankruptcy Act, 1883, see *In re Paine* (1897), 1 Q. B. 122.

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A

Treatise on the Law

RELATING TO

BANKERS AND BANKING COMPANIES.

CHAPTER I.

THE RELATION BETWEEN BANKER AND CUSTOMER.

THE ordinary relation between banker and customer is this: the customer opens an account with the banker by paying a sum of money into the bank, the banker undertaking to hold himself liable for the payment of a like sum to the customer's use, either paying interest on the money or not, as the course of business of the bank or the special arrangements between the banker and the individual customer may be, and also agreeing to honour or cash any cheques, or orders for the payment of any sums of money, which the customer may send to him, during business hours, to the extent of the sum deposited.

A less ordinary, but still a not uncommon, relation between banker and customer is, that the banker makes advances to the customer or allows him to overdraw his account, charging interest on the advances, and in most cases requiring a deposit of securities, or obtaining the guaranty of some third person, for the repayment of such advances, with interest; and whilst such accommodation

continues the former relation of the parties is of course inverted.(*a*)

Bankers not trustees.

But neither of these relations partakes of a fiduciary character, nor bears analogy to the relation between principal and factor or agent, who is a *quasi* trustee for the principal with respect to the particular matter for which he was appointed factor or agent.

Money paid into a bank ceases altogether to be the money of the person paying it in ; it is the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it.(*b*) To all intents, it is the money of the banker to do as he may please with ; though it is true that, in a popular sense, it is spoken of as "my money at my banker's ;" "my balance at my banker's ;" and though no one can doubt that in ordinary language the term "ready money" includes the speaker's balance at his banker's. Accordingly, there are many decisions construing phrases occurring in wills, of this description, to carry sums standing in a banker's books to the credit of the testator.

What words in a will sufficient to pass money at bankers.

This, looking at all the terms of a will, has been held to be the extent of a bequest of "all my ready money."(*c*)

So, under the words "ready money," a sum in a savings bank was held to pass in a will,(*d*) and a gift of money invested in "consols or other securities" to include a deposit

(*a*) See *Brooks* v. *Blackburn Benefit Society*, 9 App. Cas. 864. Where a banker permits his customer to overdraw and the customer subsequently pays in money to his account, the banker may retain the same in discharge of the customer's liability even though the money so paid in belonged to a third party, unless the banker had reason to believe that the payment is being made in fraud of such third person, and that the customer is handing over in discharge of his debt money which he has no right to hand over. It is not enough for the third party to show that the bankers acted negligently ; in order to succeed he must establish that the bank knew not only that the money did not belong to the customer, but that he had no authority from the true owner to pay it into his bank account. *Thomson* v. *Clydesdale Bank* (1893), App. Cas. 282 : see, also, *Earl of Sheffield* v. *London Joint Stock Bank*, 13 App. Cas. 333 ; *London Joint Bank* v. *Simmons* (1892), App. Cas. 201 ; and see chapter on "Deposits."

(*b*) *Foley* v. *Hill*, 2 H. L. Cas. 36 ; see *Goodwin* v. *Robarts*, L. R. 10 Ex., p. 351.

(*c*) *Parker* v. *Marchant*, 1 Ph. 356.

(*d*) *In re Powell*, Johns. 49 ; 5 Jur. (N.S.) 331

in a post-office savings bank.(*e*) A bequest of "all my ready money at my bankers, in my dwelling-house or elsewhere," will pass cash balances in the hands of the testator's banker, and of his agent.(*f*)

But money in the hands of the testator's salesmaster in Smithfield was held not to pass under "all his ready money and securities for money," there being no evidence that the salesmaster acted as the testator's banker.(*g*)

Money at a banker's, placed to the trade account of a trader, has been construed to pass in his will under "all my stock in trade."(*h*)

And the balance in a testator's favour at his bankers' may be included under the expression "all the debts due to me," and pass accordingly.(*i*)

Or the balance at a banker's may pass as "money in hand."(*k*)

So the balances at a testator's banker's upon a current account, and also upon a deposit account, where deposit notes or vouchers were given by the banker as a security for the money, the balance carrying interest and considered as money at the disposal of the depositor, and as readily accessible by him as money in an ordinary account current, were both held to pass under "all my moneys."(*l*) And under a gift of a testator's "ready money," two sums of money at his banker's, one on a drawing account, and the other on deposit, for which no notice of withdrawal is necessary, will pass.(*m*)

A gift "of any small balance remaining in the bank after payment of my funeral expenses," passed the whole

(*e*) *In re Saxby*; *Saxby* v. *Kiddell*, W. N. (1890) 171.
(*f*) *Fryer* v. *Ranken*, 11 Sim. 55.
(*g*) *Smith* v. *Butler*, 3 J. & L. 565; *De Roebuck* v. *Lord Cloncurry*, 5 Ir. R. Eq. 588.
(*h*) *Stuart* v. *Earl of Bute*, 3 Ves. 217.
(*i*) *Carr* v. *Carr*, 1 Mer. 541, n.
(*k*) *Vaisey* v. *Reynolds*, 5 Russ. 12.
(*l*) *Manning* v. *Purchell*, 2 Sm. & G. 292; affirmed on appeal, 7 De G. Mac. & G. 55. "Securities for money," on the other hand, would not pass money at a banker's on a deposit account. *Hopkins* v. *Abbot*, L. R. 19 Eq. 222; 44 L. J. Ch. 316; 23 W. R. 227.
(*m*) *Stein* v. *Richardson*, 37 L. J. Ch. 369.

balance possessed by the testator at the time of his death, though such balance had increased from 480*l.* to over 1,301*l.*(*a*)

Effects consisting partly of cash and partly of money, held by a banker on deposit notes, pass by a bequest of all the residue of a testator's moneys.(*b*)

A. made a bequest of "half my property at R.'s bank." At the date of his will A. had at R.'s bank in Paris a cash balance and certificates of French shares, some inscribed and some transferable by delivery, which were deposited with the bankers, who received the dividends and carried them to his credit. He had nothing else at the bank. It was held that a moiety of both the cash balance and of the shares passed.(*c*)

But still the legal relation of banker and customer, in their ordinary dealings in money, is purely and simply that of debtor and creditor respectively. Money paid into a banker's is merely a common law debt, and there is nothing of a fiduciary character in the relation between the parties.(*d*)

Statute of Limitations.

And it seems that the Statute of Limitations runs against this debt as against any other simple contract debt; and if there has never been any payment of the principal, or interest, or some other acknowledgment by the banker satisfying the provisions of the Act, subsequently to the first deposit, for six years, the right to recover the sum deposited would be barred by the statute.(*e*)

(*a*) *Page* v. *Young*, L. R. 19 Eq. 501; 23 W. R. 479.
(*b*) *Langdale* v. *Whitfield*, 4 K. & J. 426; 27 L. J. Ch. 795.
(*c*) *In re Prater*, 37 Ch. D. 481.
(*d*) *Foley* v. *Hill*, 2 H. L. Cas. 39, 42, 45; per KNIGHT BRUCE, L.J., in *Smith* v. *Leveaux*, 2 De G. J. & S. 5; *In re Agra Bank*, 26 L. J. Ch. 151.

Right to charge interest.

(*e*) *Pott* v. *Clegg*, 16 M. & W. 321: see *Hartland* v. *Jukes*, 1 H. & C. 667. The usage of bankers by which they charge interest on advances to customers has been expressly sanctioned by the Courts. *Gwyn* v. *Godley*, 4 Taunt. 346; *King* v. *Bradley*, 5 Price 536; *Crosskill* v. *Bower*, 32 Beav. 86; 32 L. J. Ch. 540. But before compound interest can be charged an agreement express or implied must be shown to that effect. *Fergussen* v. *Fyffe*, 8 Cl. & F. 121; *Ex parte Brown*, 9 Ves. 223. Where accounts between a banker and a customer have been carried on for a series of years on a particular principle, the Court will assume there is an agreement to that effect; but acquiescence in it does not amount to a settlement of account. *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756. So where a

If bankers were trustees of money of their customers in their hands, this must follow, that notice to them of the drawer having assigned to the payee of a cheque an interest in so much of the drawer's money would, *of itself*, bind the bankers to pay to the payee or bearer, and give the payee, or bearer, on non-payment, a right in equity against the bankers.(*f*)

But it has long since been decided that money deposited with a banker and ordered by cheque to be paid to a third person does not enable such third person to sue the bankers if they refuse to pay him—there being no privity of contract between him and the banker.(*g*)

Third person cannot sue banker on refusal to pay cheque.

The debt remains between them and the customer; so that in case of non-payment to his order, the payee has no remedy, either at law or in equity,(*h*) against the banker; but the customer is the proper party to sue, and, as will be seen, may recover substantial damages for the injury, always assuming that his account at the time shows a sufficient balance in his favour.(*i*) Nevertheless a banker may become liable to the payee or holder of a cheque for money had and received by expressly or impliedly consenting to hold to his use the moneys he has actually or impliedly received to meet it, but even then, it is submitted, this consent must be communicated in fact or constructively to such holder before the banker can become bound.(*k*)

When third person may sue banker for money had and received.

banker has been in the habit for a number of years of charging the customer interest with annual rests the customer will by reason of his acquiescence be taken to have assented to this system of keeping his accounts. *Crosskill* v. *Bower*, *supra*. An agreement to pay compound interest is terminated by the death of the customer. *Williamson* v. *Williamson*, L. R. 7 Eq. 542. And the final balance at death ceases to bear interest in the absence of any agreement to the contrary. *Crosskill* v. *Bower*, *supra*. It is the same when the balance is in the customer's favour and the banker dies, or ceases to carry on business, or becomes bankrupt. *Crosskill* v. *Bower*, *supra*.

(*f*) *Dearle* v. *Hall*, 3 Russ. 1.

(*g*) *Malcolm* v. *Scott*, 5 Exch. 610.

(*h*) *Hopkinson* v. *Foster*, L. R. 19 Eq. 74; 23 W. R. 301. This rule is not affected by section 25, sub-section (6), of the Judicature Act, 1873. *Schroeder* v. *Central Bank*, 24 W. R. 710; 34 L. T. (N.S.) 735.

(*i*) *Marzetti* v. *Williams*, 1 B. & Ad. 415; *Whitaker* v. *Bank of England*, 1 C. M. & R. 749.

(*k*) *Bernales* v. *Fuller*, 14 East, 590; *Warwick* v. *Rogers*, 5 M. & G.

It must be clearly remembered, then, that the ordinary relation between a banker and his customer is that of debtor and creditor, and not that of trustee and *cestui que trust*.(*a*)

Banker may make himself a trustee.

But although there is nothing in this relation to constitute the banker a trustee, he may, of course, by agreement, take upon himself the character of an agent, or make himself a trustee towards a *cestui que trust;* for example, if a customer deposits Exchequer Bills with a banker, and he undertakes to receive the interest upon them, or undertakes to negotiate or make sale of them, and to credit the customer's account with the proceeds of the sale, in this case, it is obvious, he is in the position of a trustee, and partly, at least, sustains a fiduciary character; but this service may or may not be appended to his employment of banker; his trade of banker is totally independent of it; his trade of banker consists of the general trade, to which the other is an accidental addition.(*b*)

Where three trustees, two of whom were bankers, were empowered by a creditors' deed to carry on the business of the debtor, and to borrow money "from any bankers or other persons" for that purpose, and the bankers made advances of money to the trust at compound interest, the Court held that, having regard to their fiduciary character, they could make no profit, and were entitled to simple interest only on their advances.(*c*)

So when a banker receives money to invest in stocks, or receives orders to appropriate the customer's balance, or a specified part of it, to any specific purpose, and assents, or does not repudiate the orders, he is in the situation of a trustee or of an agent with reference to that money.

340; *Prince* v. *Oriental Bank*, 3 App. Cas. 325; 47 L. J. P. C. 42; *Williams* v. *Everitt*, 14 East, 584; *Yates* v. *Bell*, 3 B. & A. 643. By section 74, sub-section (3) of the Bills of Exchange Act, 1882, the holder of a cheque is entitled to prove against the estate of the drawer under the circumstances and to the extent mentioned in the section.

(*a*) *In re Agra and Masterman's Bank, Ex parte Waring*, 36 L. J. Ch. 151.

(*b*) Per Lord Brougham in *Foley* v. *Hill*, 2 H. L. Cas. 44.

(*c*) *Crosskill* v. *Bower*, 32 Beav. 86; 32 L. J. Ch. 540.

But it is not necessarily part of the business of bankers to invest money for their customers.(*d*)

Where bankers take a mortgage security from their customer, for a fixed sum owing to them by the latter, the relation of banker and customer ceases thenceforth as to that sum, and it cannot be included in the customer's current account, so as to entitle the bankers to charge compound interest thereon; and in reference to the sum so secured, the mutual rights and obligations are thenceforth those of mortgagees and mortgagor.(*e*)

As the right of the customer is to draw out the whole of the sum he deposits with the banker at any time that he may so please, the acceptance by the banker of a bill drawn upon him by his customer against the amount of the balance in his favour, and made payable at a distant day, is in effect a borrowing of the sum until that day by the banker; for the customer, by drawing the bill, consents that that which is payable immediately shall not be payable until the maturity of the bill.(*f*)

Duty of banker not to disclose his customer's account.

It appears to be doubtful whether, by virtue of the relation of banker and customer, any legal duty is imposed on the banker not to disclose his customer's account, except upon a reasonable and proper occasion, so as to give a cause of action without special damage; or whether the banker's duty is not merely a duty not to act to the prejudice of his customer, requiring special damage to make a breach of the duty actionable.(*g*) But assuming the existence of a legal duty on a banker not to disclose his customer's account, except upon a reasonable and proper occasion, the question of whether the disclosure was made on such an occasion is a question to be left to the jury.(*h*)

When a cheque is presented for payment, and there are

(*d*) *Bishop* v. *Countess of Jersey*, 2 Drew. 143; 23 L. J. Ch. 483.

(*e*) *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756.

(*f*) *Bank of England* v. *Anderson*, 4 Scott, 118; 3 Bing. N. C. 663.

(*g*) *Hardy* v. *Veasy*, L. R. 3 Ex. 107; *Foster* v. *Bank of England*, 3 F. & F. 214; *Tassell* v. *Cooper*, 9 C. B. 509.

(*h*) *Hardy* v. *Veasy*, *supra*.

not sufficient assets of the drawer's in the banker's hands, he cannot say to the holder, "not enough to meet it by such a sum," and so enable the holder to pay in the deficiency to the drawer's account, and obtain payment of the cheque to the prejudice of other creditors. A banker is not justified when such is the case in going further than saying "not sufficient assets,"(*a*) or, what is more usual, "apply to the drawer." A banker as a witness is bound to answer what the balance of a party to a cause was on a given day, as the knowledge does not come to him in the nature of a privileged communication.(*b*)

Banker bound to obey and carry out customers' orders.

Bankers are bound, in acting for their customers to follow the usual course of business, and, if they neglect to do so, then they are responsible for any loss directly attributable to their omission. Thus a house in America employed an agent in Birmingham to purchase and ship goods for them, on account of which they sent to him a bill drawn by A. in America on B. in London, but without indorsing it. The agent directed his bankers to obtain B.'s acceptance of it; B. refused to accept; but of this fact, however, the bankers omitted to give any notice until the bill was due; when they again presented it and it was dishonoured. Before the bill arrived in this country A. had become bankrupt, never having had any funds in the hands of B. Then here was a damage done to the agent, but to what amount? Not to the whole amount of the bill, because of the circumstance that the house in America, not having indorsed, was not entitled to notice of dishonour of the bill, and still remained liable to him

(*a*) *Foster* v. *Bank of London*, 3 F. & F. 214.

(*b*) *Lloyd* v. *Freshfield*, 2 C. & P. 324. A banker may be compelled to give evidence respecting a customer's account under section 115 of the Companies Act, 1862. See *In re Smith*, L. R. 4 Ch. 421; *Druitt's Case*, L. R. 14 Eq. 6; *In re Financial Association Company*, *Bloxam's Case*, 36 L. J. Ch. 687; *In re Forbes' Case*, 41 L. J. Ch. 467. This power is only to be exercised for the *bonâ fide* purpose of winding up the company, and is entirely in the discretion of the court: *In re North Australian Territory Company*, 45 Ch. D. 87. As to the inspection and production of bankers' books and the taking of copies of entries therein, see Bankers Books Evidence Act, 1879, *post*.

for the price of the goods he had sent out to them; also the drawer was not entitled to notice, because he had no funds in the hands of the drawee; therefore all that the agent was entitled to recover, as the circumstances of the case stood, was the damage which he had sustained by reason of his having been delayed in prosecuting his remedy against the drawer.(*c*)

In ordinary circumstances it is obvious that the bankers might have become liable for the whole amount of the bill, namely, if the American house had indorsed, and the bill had been drawn against effects. On the same principle if money is paid into a bank with specific directions that it is to be appropriated in a particular manner, as to meet a bill, the bank is bound so to apply it.(*d*)

Not, as a rule, responsible to non-customers.

But, as has been said, it is only to their customer that, in the absence of any act of theirs, they are responsible; thus when bankers receive bills from a foreign correspondent with directions to pay the amount to the plaintiff, and refuse to do so on his application, the plaintiff cannot sustain an action against them as for money had and received to his use, although the amount of the bills may have come into their hands.(*e*)

If, however, the bankers had assented to the order, and informed the plaintiff that they held the money for him, he might, it is submitted, have sued them.(*f*)

So an order by a customer to his bankers to hold the customer's money at the disposal of A. B., is revocable until actual appropriation or payment of the money accordingly,(*g*) or until a promise by the banker to A. B. to make such payment.(*h*) Where a customer has made an absolute assignment in writing of moneys in the hands of his bankers, and notice in writing of such assignment has

(*c*) *Van Wort* v. *Woolley*, 3 B. & C. 439.
(*d*) *Farley* v. *Turner*, 26 L. J. Ch. 710.
(*e*) *Williams* v. *Everett*, 14 East, 582; *Stewart* v. *Fry*, 7 Taunt. 339; *Wedlake* v. *Hurley*, 1 C. & J. 83.
(*f*) See *ante*, p. 5.
(*g*) *Gibson* v. *Minet*, R. & M. 68; 1 C. & P. 247; 2 Bing. 7.
(*h*) *Lilly* v. *Hays*, 5 A. & E. 548; *Hodgson* v. *Anderson*, 8 B. & C, 342.

been given to the bank by the assignee, the bankers are bound thereupon to pay the assignee.(*a*)

We have already stated the duty of a banker to be to conform to the orders of his customer, with respect to the money deposited by the customer, so long as there is in his hands a balance in favour of the customer, and the orders relate to matters which it is the usage and practice of the particular bank, or of the bankers in the district, to do for their customers, or which the bank has specially agreed with the customer to do for him.

Bankers will not be responsible if, acting as the agents of other bankers with whom a party has an account, they conform to the orders of that party, though with him they have no account at all.

Thus, A.'s broker, by his directions, was accustomed to pay dividends into a banker's in London to A.'s credit in account with a bank at Abingdon, where A. resided, and the London bankers had been accustomed to act accordingly, accepting the payments, giving credit to the Abingdon bank and advising them by post next day. A certain payment of this kind was made on the 14th of October into the London house by cheque, and they wrote to advise the Abingdon bank in the usual way by the post of the 15th, on the morning of which day the Abingdon bank stopped payment, and never again opened the bank for business. On that day the Abingdon bankers were indebted to the London house to a large amount. It was held that A. had no claim against the London bank for the payment so made; for the course of business showed that A. and the country bankers had agreed that they should account to him for all sums so to be paid into the London house as above, and that the London house had actually carried the money to their credit.(*b*)

(*a*) 36 & 37 Vict. c. 66, s. 25 (6). Neither a bill nor a cheque is such an assignment: see Bills of Exchange Act, 1882, s. 53; *Schroeder* v. *Central Bank*, 24 W. R. 710; 34 L. T. (N.S.) 735. In Scotland the rule is otherwise: *British Linen Company* v. *Carruthers*, 10 Sess. Cas. 923, as to a cheque; and as to a bill, *The Same* v. *Rainey*, 12 Sess. Cas. 825.

(*b*) *Williams* v. *Deacon*, 4 Exch. 401.

Here the ground of decision seems to be, that the London bankers, by conforming to the arrangement by which in effect they undertook to comply with A.'s orders as to any money that might come to their hands purporting to be paid in by his authority and under directions from him as regarded his account with the country bank, of which conformity the course of dealing was evidence conclusive as not being met by counter proof, the London bankers were exonerated from liability to him; but, possibly, if it could have been shown that they had not in fact given credit for the money in account with the Abingdon bank before it was reclaimed by A., the result would have been otherwise.(*c*)

But, in another case, where a person, also not being a customer of the bank, paid money into a London bank in order that they might cause it to be paid to him or his order, through their correspondents, bankers in a country town, on a certain day, and they received the money, but did not cause the money to be paid on the day, whereby the party suffered damage, he was apparently considered to have a good cause of action against the London bank, on the ground that the receipt of the money was a good consideration for an undertaking to the above effect, and that they might be sued for the breach of their promise in that respect. Now here the London bankers, it is submitted, must be considered either as gratuitous bailees or as debtors in respect of the money paid in; but if they were the former, then it would have been a breach of their duty if they had not remitted the identical coins or bank notes paid in—a proposition which could hardly be maintained as against bankers; therefore it would seem that the party paying in, though not having a running account with them as a customer, must be considered as a customer *pro hâc vice*, and the bankers as debtors to him

(*c*) See *Stevens* v. *Masterman*, cited in 4 Exch. 401, where Lord ABINGER, C.B., held at Nisi Prius that such a payment might be countermanded. See *Atkin* v. *Barwick*, 1 Stra. 166; *Walker* v. *Rostron*, 9 M. & W. 411, 421; *Gibson* v. *Minet*, 2 Bing. 7.

pro tanto, and liable to comply with his orders according to the usual relation of banker and customer.(*a*)

The nature of the business of bankers has been laid down, by very high authority, to be part of the law merchant; and it is to be judicially noticed by the Courts.(*b*)

Right of banker to close customer's account.

The right of a banker to close his customer's account was recently discussed in the case of *Buckingham and Company* v. *The London and Midland Bank*, 12 T. L. R. 70. In that case the customer had two accounts open with his bankers, namely, a loan account and a drawing account. The bankers closed the latter account and transferred the balance therein standing to the credit of the customer to his loan account, in reduction of his debt. At the time there were outstanding bills and cheques of the customer, which, on being subsequently presented for payment, were dishonoured by the bank. The customer, thereupon, brought an action for damages. Three questions were left to the jury by Mr. Justice MATHEW, who tried the case:—(1) Was it the course of dealing between the plaintiff and the defendants that the plaintiff was to be allowed to draw upon his open account without reference to his loan account? (2) If so, then, was the plaintiff entitled to a reasonable notice that that course of business would be discontinued? (3) Was such reasonable notice given? The two first questions were answered by the jury in the affirmative, and the third in the negative. Damages were assessed at 500*l*., and judgment for that amount entered for the plaintiff. During the argument it was contended, as a general proposition, that a banker is entitled at any time and without notice to close his customer's account; but it is submitted that it follows from this decision that, if the customer has a balance standing to the credit of his current account and outstanding cheques or bills drawn or accepted by him, his bankers cannot close that account without giving him reasonable notice.

(*a*) *Shillibeer* v. *Glyn*, 2 M. & W. 143.
(*b*) Per Lord CAMPBELL in *Bank of Australasia* v. *Breillat*, 6 Moore, P. C. 173; referring to *Brandao* v. *Barnett*, 12 C. & F. 787.

CHAPTER II.

CHEQUES.

A CHEQUE is a bill of exchange drawn on a banker payable on demand.(*c*) Such is the definition given by the Bills of Exchange Act, 1882, of a cheque drawn on a banker, or, as it is sometimes termed, a banker's draft. It is a written order for the payment of a specified sum of money to a person named, or bearer, or order. It is directed to the banker, and should be signed by the person who draws it, and, out of whose moneys deposited with the banker, it is to be paid on presentment. Its legal effect is, in a great degree, that of an inland bill of exchange drawn on the banker, and payable to the bearer or to order on demand; in some respects, however, as will be shown hereafter, it differs from such instrument. Definition.

The form of a cheque is usually the following :— Form.

London, 5th April, 1873.

MESSRS. HOLDFAST & Co.—Pay Mr. Abraham Newland or bearer/order twenty pounds.

£20 : 0*s*. 0*d*. JOHN STILES.

No precise form of words is essential ; any words that

(*c*) 45 & 46 Vict. c. 61, s. 73. See also *M'Clean* v. *Clydesdale Banking Company*, 9 App. Cas. 95. The most correct definition of a cheque to be found in all the treatises would seem to be that given in "Story on Promissory Notes," from which the above is taken. In the Civil Code of the State of New York, "a cheque" is defined "to be a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest." And by the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 32, the term bill of exchange, for the purposes of the stamp duties, includes also draft, order, *cheque*, and letter of credit, and any document or writing (except a bank note), entitling, or purporting to entitle, any person, whether named therein or not, to payment by any other person of, or to draw upon any person for, any sum of money therein mentioned. As to when a bill is payable on demand, see Bills of Exchange Act, 1882, s. 10.

signify not a precatory request, but an order to pay a sum of money, will suffice, provided the following points are observed :—

Constituent elements.

1. *That the paper is directed to the banker by his proper or usual name, style or firm.*
2. *That it contains the sum to be paid.*
3. *That it is stamped.*
4. *That it is made payable to bearer, or to order, on demand.*
5. *That it is signed by the party drawing or entitled so to do.*

It seems that a cheque, in any other language than the English, would not be according to the usage of bankers in this country, and, therefore, a banker might legally refuse to cash such a cheque if he had any doubt as to the genuineness of the drawer's signature.

Date.

A cheque is not invalid by reason that it is not dated.(*a*) It may be *ante* dated or *post* dated, or bear date on a Sunday.(*b*) A cheque is issued when it is in the hands of a person entitled to demand cash for it.(*c*)

Although a cheque may bear date on a Sunday it would not be presented or payable on that day. But if a banker cash a cheque before the day of its date or before it is due, he will not be protected. Therefore where a banker cashed such a cheque that had been lost he was made to repay the amount to the party who had lost the cheque;(*d*) for although such a cheque is still payable on demand, it is the universal custom of bankers, in London at any rate, not to pay the

(*a*) Bills of Exchange Act, 1882, s. 3 (4) (*a*).
(*b*) Bills of Exchange Act, 1882, s. 13 (2). As to stamping *post* dated cheques, see *post*.
(*c*) *Ex parte Bignold*, 1 *Deas.* 735.
(*d*) *Da Silva* v. *Fuller*; CHITTY on "Bills," 180, 272, 10th edit., cited per PARKE, B., in *Morley* v. *Culverwell*, 7 M. & W. 178. In a very recent case (August, 1895), decided by the Supreme Court of Queensland under their Code, which is in terms identical with our Bills of Exchange Act, it was held by a majority of the court that a banker was not liable for cashing a cheque before the day of its date. This decision, as appears above, is in direct conflict with the decisions in this country. The case referred to is *Magill* v. *Bank of North Queensland*.

cheque before the date appearing upon it and, as we have seen, such custom is sanctioned by legal authority, and it is submitted that there is nothing in the Bills of Exchange Act, 1882, to overrule the decision in *Da Silva* v. *Fuller*.

Altering the date of a cheque is a material alteration and will invalidate it.(*e*) subject to what is stated on p. 105. (*h*)

We will now state the reasons for the five above-named requisites in their order, together with the principles and rules that have been laid down respecting them, and such illustrations and examples as appear to conduce to the full comprehension of the subject.

1. *As to the Address or Direction.*—A cheque, being in fact an open letter of request, must, it is obvious, to be operative, bear upon it the name of the person who is requested, as well to indicate to the holder where to present it for payment, as to show the banker who it is that is called upon to cash the order. On the same grounds that a bill of exchange must have an address according to the custom and usage of merchants, a cheque ought to have one.(*f*)

If the bank is carried on under a firm or company, either the proper and full style of the firm or company, or the style by which it is usually designated and known, ought to be used.

No person but the person addressed could, after cashing the cheque, have a right to recover from, or have allowed in account with, the drawer, the sum so advanced, which would in fact be in the nature of a gratuitous payment.

2. *The Cheque must contain the Sum to be paid.*—The relation between a banker and a person who deposits money in his bank being simply that of a debtor to a creditor, to the amount deposited, which, by the usage of

(*e*) *Vance* v. *Lowther*, L. R. 1 Ex. D. 176; 45 L. J. Ex. D. 200; 34 L. T. 286; 24 W. R. 372; *Re Boyse*, 33 Ch. D. 612.

(*f*) Beawes, Lex Mercatoria, p. 563, pl. 3, edit. 1813; Com. Dig. Merchant, F. 5.

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(*f*) Beawes, Lex Mercatoria, p. 563, pl. 3, edit. 1813 ; Com. Dig. Merchant, F. 5.

bankers, the banker is, at all times, bound to pay out again to the customer upon his cheques under his hand, until the whole, *minus* the banker's commission (where commission is payable), is exhausted, provided the cheques are presented within banking hours: it follows, that the payments cannot be required by the drawer of the cheque to be made, in any other mode, than that in which an ordinary debtor can be required to pay an ordinary debt, that is to say, in English money only. The banker is not a bailee, who is bound to return in specie the coins or other kind of money deposited, upon demand; therefore, although one thousand pounds have been deposited with him in gold, he is not bound to return gold in payment of cheques drawn against it; any cheque which may be presented will be duly honoured by paying it in whatever form a legal tender of payment of a debt, of the particular amount specified in the cheque, may be made.

Formerly, a cheque for less than twenty shillings was absolutely void, and the uttering or negotiating such an instrument rendered a person liable to a penalty of 20*l.*, mitigable to 5*l.*; and it was an offence to utter a cheque on which less than twenty shillings remained due, under the 48 Geo. 3, c. 88, s. 3. But by the 23 & 24 Vict. c. 111, s. 19, it is expressly provided that notwithstanding anything in any Act of Parliament contained to the contrary, it shall be lawful for any person to draw upon his banker, who shall *bonâ fide* hold money to or for his use, any draft or order for the payment to the bearer, or to order on demand, of any sum less than 20*s.*(*a*)

A cheque must not be expressed in foreign money, as dollars, rupees, francs, roubles, &c., because it is no part of the banker's *implied*(*b*) contract with his customer nor of

(*a*) See also 26 & 27 Vict. c. 105, s. 1. This restriction did not extend to cheques drawn upon a party's own banker in Ireland after the 8 & 9 Vict. c. 37, s. 28, or in a similar case in Scotland, after the 8 & 9 Vict. c. 38, s. 20.

(*b*) Of course such a special contract may be made between a banker and a customer or other person, but the order for such payment would not be, it is conceived, a cheque in law. See Parker, R. 45.

his duty as debtor, to pay the debt in any but the known and current money of England.(c)

The money of account of England is expressed in pounds, shillings, pence and farthings; accordingly £ *s. d.* is taken in law to mean English money; pounds, shillings, pence; and not foreign money, as *e.g.*, livres, sous, deniers,(d) and the word sterling means current money.(e)

If the amount for which a cheque purports to be drawn is expressed in words and figures, and there is a discrepancy between the two, the banker should pay the amount expressed in words.(f) It will be noticed that the Act does not require the amount in the body of the cheque to be expressed in words. Hence, a cheque, in the body of which the sum was expressed only in figures, with the letters £ *s. d.* (thus £100 10*s.* 8*d.*), could not legally be refused payment by a banker having assets in his hands, and such a cheque purporting to bear date at a place in France and properly stamped and duly presented, would be valid and binding on all parties for the amount expressed in English money.

It appears, however, to be the custom of some bankers in the case of a discrepancy between the two amounts to pay the smaller one, whether such amount is inserted in the body of the cheque or in the margin.

In cases where the larger amount is expressed in the body of the cheque, such a custom is clearly contrary to the law and would probably render the banker liable to an action at the instance of the drawer for dishonouring the cheque to the extent of the difference between the two amounts.

(c) *Rastell* v. *Draper*, Yelv. 80; Moore, 775; Cro. Jac. 88.
(d) Per ABBOTT, C.J., in *Kearney* v. *King*, 2 B. & A. 303; and see *Sprowle* v. *Legge*, 1 B. & C. 18; *Pierson* v. *Pounteys*, Yelv. 135.
(e) *Wiltshalge* v. *Davidge*, 1 Leon. 41.
(f) Bills of Exchange Act, 1882, s. 9 (2), following decision in *Sanderson* v. *Piper*, 5 Bing. N. C. 425.

Should it happen that the smaller amount was the one for which the cheque was intended to be drawn, the bankers, if they pay the amount in the body of the cheque although it be the larger one, are amply protected by the section above referred to.

But to prevent mistakes, and to render frauds less easy, the form already given, in which the sum is twice stated, once in words, and a second time in figures, with the above letters attached, is the one in general use and ought always to be adopted. For although the court would prevent a merely obvious omission or slip from being turned to the prejudice of any one connected with the cheque, as, for instance, if a cheque were drawn for "twenty-five, seventeen shillings and threepence," it would be held to mean twenty-five pounds sterling, and seventeen shillings and threepence ;(a) yet in case of a fraudulent alteration of the cheque, if the question which of the two innocent parties, the drawer or the banker, is to bear the loss arises, it was formerly answered by resolving the liability to be on that party whose conduct had in law opened the opportunity for the accomplishment of the fraudulent design ; and the loss rested with the one or the other accordingly.

But the decisions of the Courts as to the person upon whom such liability must now fall are somewhat conflicting. The inclination of the decisions, however, seems to be to make the banker liable for paying a cheque which has been fraudulently altered, as he is presumed to know what is or is not his customer's handwriting,(b) except, perhaps,

(a) *Phipps* v. *Tanner*, 5 C. & P. 488. A cheque, in which the order of the words is transposed, *e.g.*, "Pay A. B. seventeen or bearer pounds," is a cheque. *Reg.* v. *Boreham*, 2 Cox. C. C. 189.

(b) See per POLLOCK, C.B., in *Bellamy* v. *Majoribanks*, 21 L. J. Exch. 73 ; and per BAYLEY, J., in *Hall* v. *Fuller*, 5 B. & C. 750 ; *Coles* v. *Bank of England*, 10 A. & E. 449 ; *Ex parte Swan*, 7 C. B. (N.S.) 400 ; 7 H. & N. 603 ; in error, 2 H. & C. 175 ; *Swan* v. *North British Australasian Company*, 2 H. & C. 181 ; *Arnold* v. *Cheque Bank*, 1 C. P. D. 578 ; 45 L. J. C. P. 562 ; *Halifax Union* v. *Wheelwright*,

in cases where it is clear that the customer's own negligence is the immediate cause of the loss.(c) In the case of *Young* v. *Grote* the cheque was signed in blank and subsequently handed by the wife of the drawer to a clerk to fill up. The clerk, with a view to fraud, inserted the amount in words in the body, beginning well away from the end of the line, and the figures he inserted well away from the £. Thus filled up, he showed the cheque to the wife, who thought it all right. He then inserted additional words and figures in the spaces he had left for that purpose, and on presentment the bank paid the cheque as altered. On an action brought against them to recover the amount of the cheque, the Court exempted them from liability, holding that the improper mode of filling in the cheque had invited the forgery. It will not be safe, however, to rely upon this decision as stating the present law, except under precisely analogous circumstances, in view of the doubt that has been cast upon it by the *dicta* of the Lords in *Evans' Charities Case* and by the Court of Appeal in the recent case of *Scholfield* v. *Earl of Londesborough*.(d) On the other hand it would appear that neither the decisions in the *Merchants of the Staple Case*, nor in *Vagliano's Case*, are at variance with it.

3. *That the Cheque is stamped.*—By the Stamp Act, 1891, s. 32,(e) repealing the Act of 1870, it is enacted that, for the purposes of the Act, the expression bill of exchange shall (*inter alia*) include a cheque, and by the

L. R. 10 Ex. 183; 44 L. J. Ex. 121; 23 W. R. 704; *Orr* v. *Union Bank of Scotland*, 1 Macqueen, H. L. Cas. 513.

(c) *Young* v. *Grote*, 4 Bing. 253; *Bank of Ireland* v. *Trustees of Evans' Charities*, 5 H. L. Cas. 410; *Merchants of the Staple* v. *Bank of England*, 21 Q. B. D. 160; 57 L. J. Q. B. 418; 36 W. R. 880; see also Bills of Exchange Act, 1882, s. 24.

(d) *Scholfield* v. *Earl of Londesborough* [1895], 1 Q. B. 536, per ESHER, M.R., and RIGBY, L.J.; but see *Bank of England* v. *Vagliano Brothers* [1891], A. C. 107.

(e) 54 & 55 Vict. c. 39.

schedule to the Act a bill of exchange payable on demand or at sight or on presentation is liable to a stamp duty of one penny. Section 34 enacts that such fixed duty of one penny may be denoted by an adhesive stamp, which, *when the bill is drawn in the United Kingdom*, is to be cancelled(*a*) by the person by whom the bill is signed before he delivers it out of his hands, custody, or power. Therefore, if the drawer of a cheque stamp it, he must cancel it as provided by the Act; but it further provides(*b*) that if a bill payable on demand is presented unstamped the person to whom it is presented may affix an adhesive stamp and cancel it as if he were the drawer; but such proviso does not relieve any person from any penalty incurred in relation to such bill. In the case of a cheque, it has been decided that only the banker upon whom it is drawn may stamp it after issue.(*c*) The words above printed in italics were not in the corresponding section of the Act of 1870, and their insertion is probably due to the decision in *In re Boyse*,(*d*) in which it was held (*inter alia*) that section 51, sub-section (2) of the Act of 1870,(*e*) applied to foreign bills payable on demand.

Cheques may be, and, indeed, usually are, drawn on paper bearing an impressed stamp, and even if drawn abroad they must be validly stamped with an impressed stamp, as sub-section (2) of section 34 only applies to *ad valorem* duties.

Post dated Cheque.—A cheque does not from the fact of its being *post* dated cease to be payable on demand, and is, if bearing a penny stamp, sufficiently stamped within section 38 of the Stamp Act, 1891, and may be recovered upon in an action brought after its date, the test being

(*a*) As to mode of cancellation, see section 8.
(*b*) Section 38 (2).
(*c*) *Hobbs* v. *Cathie*, 6 Times L. R. 292.
(*d*) *In re Boyse*; *Crofton* v. *Crofton*, 33 Ch. D. 613; 56 L. J. Ch. 135.
(*e*) 33 & 34 Vict. c. 97, s. 51 (2).

whether a document is properly stamped at the time it is put in evidence.(*f*)

The drawer, payee, endorser, and banker will be liable to a penalty of 10*l.* if the cheque is issued, negotiated, or paid without being properly stamped.(*g*) The 38th section of the statute enacts that every person who issues, negotiates, presents for payment or pays any bill of exchange (which, of course, includes a cheque as before mentioned) liable to duty, and not being duly stamped, shall forfeit the sum of 10*l.*; and the person who takes or receives from any other person such bill, not being duly stamped, either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

Cheques exempted from Stamp Duty.—The Stamp Act, 1891,(*h*) exempts any draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers; any letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf; also a draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of

(*f*) *Royal Bank of Scotland* v. *Tottenham* [1894], 2 Q. B. 715; approving *Gatty* v. *Fry*, 2 Ex. D. 265; 46 L. J. Ex. 608; *Bull* v. *O'Sullivan*, L. R. 6 Q. B. 209; 40 L. J. Q. B. 141. An insufficiently stamped promissory note cannot be used as evidence of the receipt of the amount of the note (*Ashling* v *Boon* [1891], 1 Ch. 568); but such a note may be put to a witness to refresh his memory and obtain from him an admission of the loan: *Birchall* v. *Bullough* [1896], 1 Q. B. 325. See 54 & 55 Vict. c. 39, s. 14 (4), and s. 38 (1).

(*g*) 54 & 55 Vict. c. 39, s. 38 (1).

(*h*) 54 & 55 Vict. c. 39, Sched. 1; "Bills of Exchange," exemption 2.

a public account ;(a) and all drafts or orders drawn by the Paymaster-General on behalf of the Court of Chancery in England or by the Accountant-General of the Supreme Court of Judicature in Ireland from all stamp duty.

A receipt, although written on a duly stamped note or bill, requires a receipt stamp if for 2*l.* or upwards. But a mere writing by a banker of his name written in the ordinary course of business upon a bill or note duly stamped, whether accompanied by words of receipt or not, is exempt ; as is also the writing of his name by a payee upon a draft or order if payable to order.(b)

4. *That the Cheque be made payable to Bearer, or to Order, on Demand.*—A cheque may be either payable to bearer or to order. When payable to bearer, by the nearly universal practice as regards bankers' cheques a name is inserted, as of a person in whose favour the cheque is drawn ; and the convenience of this is obvious, for, by inserting the name or the word "self," and then adding "or bearer," either the payee in person, or any one to whom he may deliver the cheque, is competent to receive the cash for it, and the banker is bound to pay it. A cheque payable to Mr. A. B., without the words "bearer" or "order," is only payable to the particular person named, and he must himself go to the banker to get it cashed.

Non-existent and fictitious payee.

That it is not indispensable to name an individual is shown by this, that a cheque drawn thus, "Pay ship *Fortune*, or bearer," is valid, and may be sued upon by the bearer.(c) And a cheque payable to a fictitious or

(a) 54 & 55 Vict. c. 39, Sched. 1 ; "Bills of Exchange," exemption 9.

(b) 58 & 59 Vict. c. 16, s. 9. *Quære* whether a bearer note endorsed by payee for any purpose requires a receipt stamp. A document issued by a banker to the Bank of England directing them to transfer from the account of the banker to the account of the Commissioners of Customs a sum named therein is a bill payable on demand within section 32 of the Stamp Act, 1891, and is not a bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue within the meaning of the 10th exemption under "Bill of Exchange" in 1st Schedule to the Stamp Act, 1891, so as to be exempt from stamp duty : *Committee of London Clearing Bankers* v. *Commissioners of Inland Revenue* [1896], 1 Q. B. 542.

(c) *Grant* v. *Vaughan*, 3 Burr. 1527 ; *Gibson* v. *Minet*, 1 H. Bl. 609.

non-existing person may be treated as payable to bearer.(*d*) And a non-existent person is not the less a "fictitious" or non-existent person within the meaning of the Act because at the time of drawing the plaintiff supposed him to be a real person.(*e*) An instrument made payable to "—— order," the blank never having been filled in, must be construed as payable to "my order;" that is, to the order of the drawer, and, if endorsed by him, becomes a valid bill of exchange.(*f*)

It will be observed that a cheque is required by the Stamp Act, 1891, to be payable on demand; it does not, however, follow that it need contain the words *on demand* on the face of it; for if payable to bearer or to order, that makes it in law payable on demand.(*g*) And the addition of these words by the holder, without the knowledge or consent of the drawer, will not vitiate the cheque, as they only express what the law implies.(*h*)

A cheque payable to bearer may be indorsed, and entitle the indorsee or a subsequent holder, to sue the indorser thereon.(*i*) A payee, however, writing his name on the back of a cheque, as an acknowledgment of payment, is not such an indorsement as subjects him to any liability.(*k*)

A cheque payable to order, when indorsed in blank, becomes payable to bearer. This class of cheques has been described as being the statutably privileged class of drafts, as will be evident by the following provision.(*l*)

As to Cheques payable to Order on Demand.—By the Bills of Exchange Act, 1882, s. 60, when a bill payable to

(*d*) Bills of Exchange Act, 1882, s. 7 (3)

(*e*) *Clutton and Company* v. *Attenborough* [1895], 2 Q. B. 306. See also *Bank of England* v. *Vagliano Bros.* [1891], A. C. 107.

(*f*) *Chamberlain* v. *Young* [1893], 2 Q. B. 206. As to conditions necessary to render a cheque not negotiable, see *National Bank* v. *Silke* [1891], 1 Q. B. 435.

(*g*) *Hare* v. *Copland*, 13 Ir. Com. Law Rep. 426. See also Bills of Exchange Act, 1882, s. 10.

(*h*) *Aldous* v. *Cornwall*, 9 B. & S. 607; 37 L. J. Q. B. 201.

(*i*) *Keene* v. *Beard*, 8 C. B. (N.S.) 372; 29 L. J. C. P. 287.

(*k*) As to the necessity of stamping such a document as a receipt, see 58 & 59 Vict. c. 16, s. 9 (1).

(*l*) Per CHRISTIAN, J., in *Hare* v. *Copland*, *supra.*

order on demand is drawn on a banker, and the banker upon whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.(*a*) This section it will be seen is in effect a re-enactment of section 19 of the Bankers Relief Act, 1856,(*b*) so far as it relates to cheques, but it probably applies equally to inland and foreign bills drawn on demand, thus extending the provision of the Act of 1856, which only applied to inland bills.

It is only the banker who is protected by this section, and not a third party who cashes such cheque; therefore, if the indorsement of the name of the payee to whose order it was made payable is a forgery, such third person will be liable to refund the amount of it to the true owner.(*c*) Mere negligence in the custody of a draft, or in its transmission by post, will not disentitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it. Negligence to amount to an estoppel must be on the transaction itself, and be the proximate cause of leading the third party into mistake,

(*a*) Notwithstanding this section, however, it would probably not be safe for bankers to pay a cheque, purporting to be drawn by a customer and to be indorsed by the payee, without ascertaining the genuineness of both signatures, *if the customer had at the time of the presentment and payment no funds in their hands*; for it might be held that such a payment was not made in the ordinary course of business within the meaning of the section; and see *Forster* v. *Clements*, 2 Camp. 17.

(*b*) 16 & 17 Vict. c. 59, s. 19. This section is not repealed by the Bills of Exchange Act, 1882.

(*c*) *Ogden* v. *Benas*, L. R. 9 C. P. 513; 43 L. J. C. P. 259; *Arnold* v. *Cheque Bank*, 1 C. P. D. 578; 45 L. J. C. P. 562; *Bobbet* v. *Pinkett*, 1 Ex. D. 368; 35 L. J. Exch. 555. But see *London and River Plate Bank, Limited* v. *Bank of Liverpool and Others* [1896], 1 Q. B. 7, where it was held that when a bill becomes due and is presented for payment and is paid in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid cannot be recovered from the holder, although indorsements on the bill subsequently prove to be forgeries.

and also must be the neglect of some duty, which is owing to such third person or to the general public.(*d*)

An indorsement purporting to be by the agent of the person to whose order the cheque is payable is within the Act of 1856.(*e*) Bankers in London resolved in 1868 to pay cheques indorsed by procuration, except in special cases, without guarantee, and they have followed this practice to the present time.

5. *The Cheque must bear the Drawer's Signature.*—Signature does not necessarily mean subscription, or writing the full name at the foot of the document; if the name appears in any part of the cheque, so as to show who it is that orders the payment, that will be sufficient to authorise the bankers to pay, providing the handwriting is that of their customer of the name stated. For the reason of requiring signature will be thus satisfied; for adequate means of identification by the handwriting will be afforded.(*f*)

Thus a cheque would be good which, instead of being subscribed with the name of the drawer, as in the form above given, was expressed thus:—"I, John Stiles, desire you to pay," &c.; and was properly addressed, &c.; or thus: "Mr. Stiles desires Messrs. Holdfast to pay," &c.; for in either case, being written by the person drawing, the cheque would contain sufficient means of identification.

Marksman.

An illiterate person must draw a cheque, by placing his mark, in the usual place of writing a name and style, on a cheque, the body of the cheque being filled up in the usual manner.(*g*)

(*d*) *Arnold* v. *Cheque Bank*, *supra*.

(*e*) *Charles* v. *Blackwell*, 2 C. P. D. 151. See also *Bissell* v. *Fox*, 53 L. T. 193.

(*f*) *Taylor* v. *Dobbins*, 1 Strange, 399; *Saunderson* v. *Jackson*, 2 B. & P. 238.

(*g*) Per MAULE, J., in *Serrell* v. *Derbyshire, &c., Railway Company*, 19 L. J. C. P. 373; 9 C. B. 827.

Who may be Drawers—Executors, and Administators.—Executors, however numerous, are regarded in law as an individual person ; and, therefore, the acts of one of them, in respect of the administration of the effects, are deemed to be the acts of all. Hence payment to one is payment to all ; it follows, therefore, that if several executors have a fund standing in their joint names at a banker's, payment of a cheque signed by one of them will discharge the banker as to all.(*a*) So it would be, although the executors were acting under a forged will.(*b*) But if one of several executors draws a cheque the bankers may refuse to cash it if they have received notice from one of the others not to part with the money.(*c*)

So a payment of the cheque of any of several administrators, made *bonâ fide*, would discharge the banker, although a will should afterwards be found.(*d*)

So a payment of the cheque of a surviving administrator of several, exonerates the banker : in a case where such survivor drew out a fund and absconded, the loss fell on the estate of the deceased administrator.(*e*)

Trustee in Bankruptcy.—Under the Bankruptcy Act, 1883,(*f*) a single trustee now represents the interests of the creditors, to whom, when appointed, all property of a bankrupt passes. A banker, therefore, having in his hands funds of the bankrupt, is justified in paying the same to the trustee. The creditors may, by section 84 (1), if they think fit, appoint more persons than one to the office of trustee, and where more than one is appointed, they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one

(*a*) *Ex parte Rigby*, 19 Ves. 463 ; *Can* v. *Read*, 3 Atk. 695.
(*b*) *Allen* v. *Dundas*, 3 T. R. 125.
(*c*) *Gaunt* v. *Taylor*, 2 Hare, 413.
(*d*) *Pond* v. *Underwood*, 2 Ld. Raym. 1210 ; *Prosser* v. *Wagner*, 1 C. B. (N.S.) 289.
(*e*) *Clough* v. *Bond*, 3 M. & C. 490.
(*f*) 46 & 47 Vict. c. 52, s. 21.

or more of them, but all shall be joint tenants of the property of the bankrupt.

Agent.—An agent, though unauthorised to draw or indorse cheques in the name of his principal, can nevertheless bind his principal by doing so, provided the drawing and indorsing of cheques is incidental to the business he is deputed to transact, and provided the party dealing with him has no notice of want of authority.(*g*) By the Bills of Exchange Act, 1882,(*h*) a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was within the actual limits of his authority. In a recent case, however, it has been held that where an agent signed a cheque that proved in excess of his authority and the proceeds of the cheque had been used for the benefit of the principals, they were liable to the plaintiffs for money had and received although they were not liable on the cheque.(*i*)

An authority to draw does not of itself imply an authority to indorse.(*k*) But where a confidential clerk is accustomed to draw cheques on his principal's account, and has, on occasion at least, been authorised to indorse and to receive money obtained by such indorsement in their name, a jury is warranted in inferring that the clerk had a general authority to indorse.(*l*) Where an agent accepts or indorses "*per, pro,*" the taker of the bill is bound to inquire as to the extent of the agent's authority. When the agent has such authority his abuse of it does not affect a *bonâ fide* holder for value.(*m*)

An agent is personally liable on a cheque drawn or

(*g*) See *Howard* v. *Baillie*, 2 H. Bl. 618; *Davidson* v. *Stanley*, 2 M. & G. 721; *Edmunds* v. *Bushell*, L. R. 1 Q. B. 97; *Beveridge* v. *Beveridge*, L. R. 2 Sc. App. 183; *Hogarth* v. *Wherley*, L. R. 10 C. P. 630.

(*h*) 45 & 46 Vict. c. 61, s. 25.

(*i*) *Reid* v. *Rigby and Company* [1894], 2 Q. B. 40.

(*k*) *Robinson* v. *Yarrow*, 7 Taunt. 455.

(*l*) *Prescott* v. *Flinn*, 9 Bing. 19.

(*m*) *Bryant Powis and Bryant* v. *Banque du Peuple* [1893], App. Cas. 170.

indorsed by him, unless he signs it in such a manner that it appears on the face of it, to be drawn or indorsed by him on behalf of another.(a) And by section 26 of the Bills of Exchange Act, 1882, the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

If a person signs a bill or note in the name of another, without that other's authority, though, it would seem, he does not render himself liable to an action on the bill or note, he may, nevertheless, be sued on the implied contract, that he had the authority he so represented himself as possessing ;(b) and if he has been guilty of fraud, an action for fraudulent misrepresentation will also lie.(c)

Married Women.—A married woman cannot deposit money (other than that belonging to her as her separate estate) with a banker and draw cheques thereon, except as agent or with the implied assent of her husband ; and the only effect of opening the account in the name of the wife alone is to show that the contract which the husband makes with the bank is a contract that they shall honour the cheques of the wife, so that supposing the wife drew a cheque, and the bankers refused to honour it, and an action was brought against them for doing so, the action could only be brought in the name of the husband.(d) Money, however, deposited in a bank by a husband in the joint names of himself and his wife, to be a provision for her in case of his death, will upon his death become the absolute property of his wife,(e) though if the deposit is made with no such intention, but only for the sake of con-

(a) *Leadbitter* v. *Farrow*, 5 M. & G. 345 ; *Alexander* v. *Sizer*, L. R. 4 Ex. 105 ; *Mare* v. *Charles*, 25 L. J. Q. B. 119 ; *Dutton* v. *Marsh*, L. R. 6 Q. B. 361.

(b) *Randall* v. *Trimen*, 15 C. B. 786 ; *Collen* v. *Wright*, 7 E. & B. 647 ; *Kelner* v. *Baxter*, L. R. 2 C. P. 174.

(c) See *Kelner* v. *Baxter* and *Collin* v. *Wright*, *supra* ; *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 360.

(d) See *Lloyd* v. *Pughe*, L. R. 8 Ch. 88 ; 42 L. J. Ch. 282 ; 28 L. T. 250.

(e) *Williams* v. *Davies*, 33 L. J. Prob. 127.

venience, it is otherwise.(*f*) A married woman is liable to the extent of her separate estate on all contracts (which would include liability as a party to a bill or note) entered into by her otherwise than as agent, whether at the time. of contracting she have or have not separate estate, and such contract will bind all her separate estate which she may have when the contract is made or which she may become possessed of or entitled to subsequently.(*g*) A creditor can, therefore, satisfy his judgment out of any separate estate the married woman may have and it is immaterial at what time she acquired it; the onus of proving that she had such estate is on the person seeking to enforce the judgment.

By the Married Women's Property Act, 1882,(*h*) every woman married after the passing of the Act is entitled to hold and dispose of as her separate estate all real and personal property which belonged to her at the time of her marriage or is acquired by her after her marriage, including any earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she may be engaged, or which she may be carrying on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.(*i*)

A married woman may thus open and keep a banking account, and make binding contracts with her banker, which will be enforced against her separate estate.(*k*) A

(*f*) *Marshal* v. *Crutwell*, L. R. 20 Eq. 331; 44 L. J. Ch. 504.

(*g*) 56 & 57 Vict. c. 63, s. 1. Reversing *Stogden* v. *Lee* [1891], 1 Q. B. 661; *Palliser* v. *Gurney*, 19 Q. B. D. 519; and *Deakin* v. *Lakin*, 30 Ch. D. 169. A creditor who has contracted with a married woman on the strength of her separate estate cannot touch it until he has got judgment against her. *Robinson* v. *Pickering*, 16 Ch. D. 660. As to agency for husband, see *Debenham* v. *Mellon*, 6 App. Cas. 24.

(*h*) 45 & 46 Vict. c. 75.

(*i*) Under the corresponding section in the Act of 1870, see *Ashworth* v. *Outram*, 5 Ch. D. 923; 46 L. T. 687; 25 W. R. 896; *Thompson* v. *Bennett*, 6 Ch. D. 739; 46 L. T. 803; 25 W. R. 862; *Lovell* v. *Newton*, 4 C. P. D. 7; 27 W. R. 366; *Duncan* v. *Cashin*, L. R. 10 C. P. 554; 44 L. J. C. P. 896; *Lumley* v. *Timms*, 28 L. T. 608; 21 W. R. 494; *In re Tharp*, 3 Ch. D. 59; 35 L. T. 293.

(*k*) *The London Chartered Bank of Australia* v. *Lempriere*, L. R. 4 P. C. 572; 42 L. J. P. C. 49.

married woman, moreover, by section 12, is empowered to maintain an action in her own name, to recover and secure her separate property, and generally has conferred upon her the same civil and criminal remedies as are possessed by a *feme sole*. Under the corresponding section in the Act of 1870, a married woman has been held to be entitled to an action against a banker for not honouring a cheque drawn upon her separate estate deposited with him, and it is submitted that such an action would still lie.(*a*)

A woman who is judicially separated from her husband is for the purposes now being considered deemed to be a *feme sole*.(*b*)

Trustees.—In the case of trustees in general, or any other body of persons not being in partnership, having placed money to their joint account with bankers, the latter are, by the nature of the relation between banker and customer, as regulated by the usage of banking, entitled to have assurance that each of the trustees, or each of the body of persons, assents to and authorises the money being paid out, and therefore, in such case, the law is that each trustee, or each of such body, must sign the cheque, or the bankers may refuse to pay it; for they will not be discharged if they do pay it, except where, subsequently to the deposit, the drawer has become alone entitled to receive the money, or the bank has received authority to honour the signatures of some only, or by express agreement between the parties.(*c*)

Where one of such trustees has absconded, so that his signature cannot be obtained, equity will relieve by making

(*a*) *Summers* v. *City Bank*, L. R. 9 C. P. 580; 43 L. J. C. P. 261; see, also, on same section, *Roberts* v. *Evans*, 7 Ch. D. 830; 47 L. J. Ch. 469; *Hancocks* v. *Lablache*, 3 C. P. D. 197; 47 L. J. C. P. 514.

(*b*) See 20 & 21 Vict. c. 85, ss. 25, 26; see also *Waite* v. *Morland*, 38 Ch. D. 135.

(*c*) *Innes* v. *Stephenson*, 1 M. & Rob. 145; *Husband* v. *Davis*, 20 L. J. C. P. 119; 10 C. B. 640; *Stone* v. *Marsh*, R. & M. 364; *Lee* v. *Stewart*, M. & M. 160.

an order that the bankers shall pay the cheque of the remaining trustees.(*d*)

Partners.—In the case of partners having a joint account with a banker.(*e*)

"There is no doubt that the act of every single partner in a transaction relating to the partnership binds the others," where there is no collusion or *crassa negligentia*, on the part of those in whose favour the act is done.(*f*)

Therefore, in the absence of any special agreement, fixing the mode in which cheques should be drawn upon the partnership fund, in his hands, the banker would be bound to honour cheques (not post dated) drawn in the partnership name,(*g*) but not otherwise.(*h*)

If the name of the firm is inaccurately stated, it would seem that the banker ought not to cash the cheque without inquiry; for such a defect would probably be considered by a jury as sufficient to awaken the suspicion of a prudent man, unless it were shown that such departure from the proper style was habitual on the part of the member of the firm in whose handwriting the cheque had the appearance of being drawn, or unless it were agreed upon, between the banker and the partnership, that he should honour cheques so drawn.(*i*)

If one partner in a firm draws a bill in breach of the partnership agreement, the firm is nevertheless liable if the holder has, at the time of taking the bill, no notice that the bill is drawn in violation of the agreement, and can show that he gave value.(*k*) But if it can be shown that the holder has notice, or if in cases where no such

(*d*) *Ex parte Hunter*, 2 Rose, 363; 1 Mer. 408.
(*e*) See also chapter on "Common Law Partnerships."
(*f*) Per Lord MANSFIELD, C.J., *Hope* v. *Cust*, 1 East, 53. See also 53 & 54 Vict. c. 39, ss. 5, 6.
(*g*) *Forster* v. *Mackreth*, L. R. 2 Ex. 163; BYLES on "Bills," 50 (15th ed.).
(*h*) *Kirk* v. *Blurton*, 9 M. & W. 284; *Emly* v. *Lye*, 15 East, 7; *Nicholson* v. *Ricketts*, 29 L. J. Q. B. 55.
(*i*) See *Kirk* v. *Blurton*, *supra*; *Sheppard* v. *Dry*, BYLES on "Bills," 51 (15th ed.); per TINDAL, C.J., *Bawden* v. *Howell*, 3 M. & G. 641; *Wintle* v. *Crowther*, 1 C. & J. 310.
(*k*) *Hogg* v. *Skeen*, 34 L. J. C. P. 153.

partnership agreement exists between the partners, the other members of the firm give him notice that they will not be responsible for bills of their co-partners, the firm is not liable, though the bill be given in the course of partnership business.(*a*)

If the name of a partnership firm be merely the name of an individual partner, proof that he signed such name to a bill of exchange is not enough to make the firm liable on the bill. To establish the liability, the holder of the bill must further prove that the signature was put to it by the authority and for the purposes of the firm.(*b*) A partner has no implied authority to bind his firm by issuing acceptances in blank.(*c*)

A question, however, may arise, whether one partner could not bind the partnership, by signing, under the general authority conferred by the partnership, the names of all the partners, though the style of the firm did not consist of those names.(*d*)

Where accounts are kept at a bankers by a firm, each partner having a right to draw cheques, and also by the individual partners of the firm, it is not the duty of the bankers to inquire into the propriety of any transfer of funds which may be made from and to the different accounts.(*e*)

Upon the death of one partner in a firm, having an account at a bankers, the surviving partner has a right to draw cheques upon the partnership account.(*e*)

If one of two partners opens an account with a bank in his own name, this is not conclusive to show the account to be his solely; the banker may prove that the partner was acting as agent for the firm, in so opening the account; but the mere fact of the money deposited being partnership

(*a*) *Gallway* v. *Mathews*, 10 East, 264. See also 53 & 54 Vict. c. 39, s. 8.
(*b*) *Yorkshire Banking Company* v. *Beatson*, 5 C. P. D. 109.
(*c*) *Hogarth* v. *Latham and Company*, 3 Q. B. D. 643; 47 L. J. Q. B. 339; 39 L. T. 75; 26 W. R. 388.
(*d*) Per MAULE, J., *Norton* v. *Seymour*, 3 C. B. 792, 794; *Hogarth* v. *Latham*, *supra*.
(*e*) *Backhouse* v. *Charlton*, 8 Ch. D. 444.

property is not sufficient to show this, in an action by the other partner for dishonouring his cheque.(*f*)

There is no implication of law from the mere existence of a trade partnership, that one partner has authority to bind the firm by opening a banking account on its behalf in his own name.(*g*)

What has been said respecting partners signing cheques relates only to persons who are known to the bankers to be members of the firm, and not to partners who are not so known; for a banker would not be bound to honour the cheque of a dormant partner, whom he did not know to be jointly interested in the fund with the others, although he were satisfied of the genuineness of the signature, and he could not, therefore, safely do so until he had got the authority of the firm.(*h*)

The name in the pass-book is not conclusive that the bankers contracted with that person *alone*.(*i*)

Where two houses of business are partners in a particular transaction, and have a joint sum to the account of the transaction in the hands of a bank, payment of the cheque of one house, out of that fund, is payment to both.

Corporations.—When a corporate body has a deposit at a bankers', it is in accordance with strict principles to lay down, that the bankers would not, at common law, be discharged by payment of a cheque that was not under the common seal, or signed by some officer of the corporation, whose signature the bankers were authorised to honour, by authority expressly given in an instrument under the common seal; but in most cases of statutory corporations power is given to three directors, or to a finance committee, or to other officers or persons designated in the act, to draw and sign cheques, &c. In such cases the cheques ought to

(*f*) *Cooke* v. *Seeley*, 2 Exch. 746.
(*g*) *Alliance Bank* v. *Kearsley*, L. R. 6 C. P. 433; 40 L. J. C. P. 249.
(*h*) See per PARKE, B., *Cooke* v. *Seeley*, 2 Exch. 749.
(*i*) *Sims* v. *Bond*, 5 B. & Ad. 389.

bear the signature (and, where that is required, the countersign) of all the parties designated.(*a*)

Companies

"A banker," it has been said, "dealing with a company must be taken to be acquainted with the manner in which, under the articles of association, the moneys of the company may be drawn out of his bank for the purposes of the company . . . . and the banker must also be taken to have had knowledge, from the articles, of the duties of the directors, and the mode in which the directors were to be appointed. But after that, when there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company. They are entitled to presume that that of which only they can have knowledge, viz., the external acts, are rightly done, when those external acts purport to be performed in the mode in which they ought to be performed."(*b*)

So, bankers who have funds of a company (formed under the Companies Act, 1862) in their hands may (acting *bonâ fide*) lawfully honour the cheques of the directors of the company, signed according to a form sent by them to the bank, without being bound, previously, to inquire whether the persons intending to sign as directors have been duly appointed to office, in conformity with the provisions of the memorandum and articles of association : thus,—

W., in concert with some friends and dependents of his, started a company called a mining company. The memorandum and articles of association were registered. Sub-

(*a*) See *Serrell* v. *Derbyshire Railway Company*, 19 L. J. C. P. 371; *Halford* v. *Cameron Coalbrook Company*, 16 Q. B. 442. By section 91 of the Bills of Exchange Act, 1882, where an instrument or writing is required to be signed, it is sufficient if it be sealed with the corporate seal, but it does not require that a bill or note of a corporation should be under seal.

(*b*) Per Lord HATHERLEY in *Mahoney* v. *The East Holyford Mining Company*. L. R. 7 H. L. 869, 894; 33 L. T. 383. See *Royal British Bank* v *urquand*, 6 E. & B. 327; *Fountaine* v. *Carmarthen Railway Company*, L. R. 5 Eq. 316. See also Chapter on "Companies."

scriptions were obtained from persons becoming shareholders, and these subscriptions were paid into a bank, which had been described in the prospectuses of the company, as the bank for the company. The bankers received a formal notice, signed by the person who described himself as the secretary of the company, that they were to pay the cheques signed by "either two of the following three directors," and countersigned by himself, in accordance with a "resolution passed this day;" and the names of the three persons described as directors, and their signatures were inclosed with the "resolution." The bankers from time to time, while the business of the company appeared to be going on, received cheques signed and countersigned as described, and duly honoured them. When the fund had been almost entirely drawn out, the company was ordered to be wound up. It then appeared that there never had been a meeting of shareholders, nor any appointment of directors or of a secretary, but that the persons who had got up the company had treated themselves as directors and secretary and appropriated the money obtained from the subscriptions:—Held, that the official liquidator could not recover from the bankers the amount of the cheques which, under the circumstances disclosed in the case, they had thus *bonâ fide* paid; and, also, that where those who draw and those who *bonâ fide* honour cheques intend them to operate on a certain account, no objection can afterwards be taken that that account is not specifically mentioned on the face of the cheques.(*c*)

A direction given by persons who are directors of a company to their bankers, when the company had a balance in the hands of the bankers, to honour cheques drawn and signed in a particular manner, does not of itself impose upon the directors any personal responsibility as to those cheques; and although the direction should continue to be acted on by the bankers after the company's account has

(*c*) *Mahony* v. *The East Holyford Mining Company*, L. R. 7 H. L. 869.

been overdrawn, will it entail on the directors who gave it any personal liability. Nor will it entail any such liability on those who, at a subsequent meeting of the board of directors, confirmed the minutes of the board meeting at which it was given, and who drew cheques in accordance with it, though the account was overdrawn when these latter cheques were issued and honoured.(*a*)

By the Companies Act, 1862, s. 41, every company having its liability limited, either by shares or by guarantee, shall have its name mentioned in legible characters on all cheques or orders for money, purporting to be signed by or on behalf of such company; and by section 42, if any director, manager or officer of such company, or any person on its behalf, signs, or authorises to be signed, on behalf of such company, any cheque or order for money, wherein its name is not so mentioned, he shall be liable to a penalty of 50*l*., and shall further be personally liable to the holder of such cheque, or order for money, for the amount thereof, unless the same is duly paid by the company.

Lunatics.—A party to a contract cannot avoid it on the ground of insanity at the time he entered into it, unless his insanity was at the time known to the other contracting party. The burden of proving both the insanity and the knowledge of it by the other contracting party lies upon the party seeking to avoid the contract.(*b*)

In *Stone's Case* the plaintiffs were payees of a promissory note and the defendant was one of the drawers, and the jury found as a fact on the second trial that the plaintiffs were aware of the condition of the defendant at the time the note was signed, and, therefore, the Court held that the defendant was not liable. It would seem, there-

(*a*) *Beattie* v. *Lord Ebury*, L. R. 7 H. L. 102; 44 L. J. Ch. 20; 30 L. T. 581; 22 W. R. 897.

(*b*) *Imperial Loan Company* v. *Stone* [1892], 1 Q. B. 599; *Molton* v. *Carnroux*, 2 Exch. 487 G.

fore, that a banker is protected if he pays a customer's cheque, although that customer should be of unsound mind, unless the banker was aware of the fact.

Drunkards.—The same law is applicable to drunkards,(*c*) but the knowledge of the state of the defendant in such a case would, of course, be easier proved than in the case of a lunatic.

Infants.—It seems very doubtful whether an infant can draw a valid cheque. A banker, therefore, who cashes the cheque of an infant does so at his own risk, for an infant cannot give a legal discharge.(*d*) An acceptance by an infant of a bill, although for necessaries, is absolutely void.(*e*)

It is, perhaps, needless to state that the drawer of a cheque may at any time direct his banker to refuse payment, and the banker will not incur any liability by acting in accordance with such instructions.

(*c*) *Gore* v. *Gibson*, 13 M. & W. 623; 14 L. J. Ex. 151.
(*d*) See per Lord ABINGER, C.B., in *Culland* v. *Lloyd*, 6 M. & W. 31.
(*e*) *In re Soltykoff*; *Ex parte Margrett* [1891], 1 Q. B. 413.

CHAPTER III.

MODE OF PAYMENT OF CHEQUES.

In what Coin or Notes may Cheques be legally paid by Bankers.—For a cheque not exceeding in amount forty shillings a tender of payment in silver is good.(*a*)

Legal tender.

(*a*) The Coinage Act, 1870 (33 Vict. c. 10, s. 4), enacts that a tender of payment of money, if made in coins which have been issued by the Mint in accordance with the provisions of this Act, and have not been called in by any proclamation made in pursuance of this Act, and have not become diminished in weight, by wear or otherwise, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the first schedule to this Act, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender—

In the case of gold coins for a payment of any amount:

In the case of silver coins for a payment of an amount not exceeding **40*s*.**, but for no greater amount:

In the case of bronze coins for a payment of an amount not exceeding 1*s*., but for no greater amount:

Nothing in this Act shall prevent any paper currency, which under any Act or otherwise is a legal tender, from being a legal tender.

Prohibition of other coins and tokens.

By section 5, no piece of gold, silver, copper or bronze, or of any metal or mixed metal, of any value, shall be made or issued, except by the Mint, as a coin or a token of money, or as purporting that the holder thereof is entitled to demand any value denoted thereon.

Contracts, &c., to be made in currency.

By section 6, every contract, sale, payment, bill, note, instrument and security for money, and every transaction, dealing, matter and thing whatsoever relating to money, or involving the payment of or the liability to pay any money, which is made, executed or entered into, done or had, shall be made, executed, entered into, done and had, according to the coins which are current and legal tender in pursuance of this Act, and not otherwise, unless the same be made, executed, entered into, done or had according to the currency of some British possession or some foreign State.

Defacing light gold coin.

By section 7, where any gold of the realm is below the current weight as provided by this Act, or where any coin is called in by any proclamation, every person shall, by himself or others, cut, break or deface any such coin tendered to him in payment, and the person tendering the same shall bear the loss. If any coin cut, broken or defaced in pursuance of this section is not below the current weight, or has not been called in by any proclamation, the person cutting, breaking or defacing the same shall receive the same in payment according to its denomination. Any dispute that may arise under this section may be determined by a summary proceeding.

Defacing gold, silver or copper coin.

By 24 & 25 Vict. c. 99, s. 7, no tender of payment in money made in gold, silver or copper coin, defaced by being stamped with any name or words thereon, whether such coin shall or shall not be thereby diminished or lightened, shall be allowed to be a legal tender.

Above forty shillings, and up to and including 5*l*., gold appears to be the only legal tender; for it is only in case of sums above 5*l*. that Bank of England notes are at present a legal tender.

With respect to sums above 5*l*., the following is the subsisting law:—By 3 & 4 Will. 4, c. 98, s. 6, a tender of a note or notes of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount, for all sums above 5*l*., on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their notes in legal coin; provided always, that no such note or notes shall be deemed a legal tender of payment by the governor and company of the Bank of England, or any branch bank of the governor and company; but the governor and company are not to become liable or be required to pay and satisfy at any branch bank of the governor and company any note or notes of the governor and company not made specially payable at such branch bank; but the governor and company shall be liable to pay and satisfy at the Bank of England in London all notes of the governor and company, or of any branch thereof.

By 8 & 9 Vict. c. 38, s. 15, which was passed for the purpose of removing doubts as to the extent of the operation of 3 & 4 Will. 4, c. 98, the notes of the Bank of England were declared not to be a legal tender in Scotland, although they may circulate in Scotland. So, by 8 & 9 Vict. c. 37, s. 6, Bank of England notes were declared not to be a legal tender in Ireland, although there is nothing to prohibit their circulation in that country.

Therefore a cheque for 100*l*. may be cashed at any bank but the Bank of England or one of its branch banks, in the following manner, without the banker incurring liability, for refusing to honour the cheque or otherwise. He may pay 40*s*. in silver; he may and must pay the next

3*l.* in gold ; the remaining 95*l.* he may pay in gold or in Bank of England notes "expressed to be payable to bearer on demand," which therefore must not be made specially payable at a branch bank, it is apprehended, but must be the ordinary Bank of England notes, payable at the Bank of England in London, otherwise the payee of the cheque might refuse them, and the drawer might recover damages in an action against the banker for refusing to honour his cheque.

A depositor's cheque must be paid at the Bank of England, or one of its branch banks, in gold, for sums above 40*s.*, if he insists upon it, provided the whole amount demanded above 40*s.* can be expressed in gold coin ; thus, 2*l.* 10*s.* can be paid with a half sovereign and 40*s.* in silver ; 2*l.* 5*s.* with a half sovereign and 35*s.* in silver.

If the above statement be correct, it will follow that a customer who draws a cheque for 100*l.* on his banker, or the bearer, can only demand 3*l.* of it to be paid in gold ; and so of any cheque for a greater sum than 100*l.* ; and the same is obviously the case of any smaller sum down to 5*l.*, and so *mutatis mutandis* of sums under 5*l.* and above 40*s.* The almost uniform custom of bankers to consult the pleasure of the payee or bearer, as to how he wishes to have the cash paid over to him, is merely a matter of courtesy, and in no respect, except as above mentioned, obligatory on them.

Counterfeit Coin.—Where the banker innocently makes the payment in bad coined money, the payee taking it in payment without objection at the moment, that is before the transaction of the presentment and payment can be considered as fairly at an end, cannot afterwards complain, and must bear the loss, for he takes it at his peril ; and having once recognized it as money, cannot afterwards be allowed to say it is not so. This, which is the general rule applicable wherever a debt is paid in coin, seems to rest on

satisfactory grounds; for there are various and well-known tests which may readily be applied for the purpose of ascertaining the goodness of money, as weighing, ringing, &c.; and, moreover, it would obviously open a door to fraud, and endless confusion and delay of business, if the payee of a debt were allowed to say "such and such coins were received in payment from the debtor and were bad; their amount must be paid over again." In most instances, this would be to place the debtor, who would be without any means of showing that the coins he paid with were other than those which the creditor alleges to be false, at the mercy of the latter. The principle, therefore, that a loss which must fall upon one of two innocent parties, shall fall upon that one whose conduct has given rise to it, seems to apply here, and to show the propriety and justice of ruling that the payee who might, but did not, apply some test, or take the objection at the proper time, is for ever concluded. If the banker, upon the objection being made, at the right time, should insist that the money is good, and refuse to change it for other coins, the payee ought to request him to put some private mark upon the money, and perhaps to place it in the hands of some third person, until it could be assayed, or other decisive means taken to ascertain its real value.

In forged Bank of England Notes.—But if the cheque is cashed in *forged* Bank of England notes the payment is a nullity;(a) and the law appears to be that, in strictness, the drawer might recover damages from the banker for dishonouring his cheque, although the banker was ignorant when he tendered the bank notes that they were spurious; for the payee of the cheque may certainly treat the debt due to him from the drawer as unpaid, and may recover it from him; and consequently the drawer may recover from the banker according to the rule already stated, that when

(a) See per LITTLEDALE, J., in *Camidge* v. *Allenby*, 6 B. & C. 385.

a loss must fall upon one of two innocent parties, the sufferer must be the party whose conduct has most immediately led to it; and here the banker is guilty of laches and negligence in not ascertaining the genuineness of the bank notes before he tenders and passes them.

As there is no privity between the bearer and the banker, and the former is merely the hand into which the banker is directed by the drawer to pay the debt which the banker owes to him (the drawer), and the order of the drawer cannot operate to make the banker debtor to the bearer, of course the bearer cannot sue the banker for non-payment, unless in an unusual case of the banker's accepting the instrument.(*a*)

In Bills of Exchange, Country Bank Notes, &c.—Where payment is made by the banker in bills of exchange, country bank notes, or other negotiable instruments, it becomes necessary to consider the relationship of the parties between whom the dispute has arisen. It is submitted that the following is a summary of the law as it at present stands:—

1. *As between Banker and Drawer.*—If a customer in payment of his cheque receives from his bankers a bill of exchange or other negotiable instrument, to which the *bankers are or make themselves parties*, an action on the instrument will lie against the bankers, on the same being dishonored, provided the customer has taken the usual and necessary steps in respect of due presentment and the giving of notice of dishonour. If the customer is guilty of laches in this respect, the banker is discharged from all further liability.(*b*) If the bankers have given him a banker's note made by themselves, and subsequently fail, the customer can prove against their estate.(*c*)

But when the customer takes a negotiable instrument to which the bankers are not parties, and which they do

(*a*) *Bellamy* v. *Marjoribanks*, 21 L. J. Ex. 77; 7 Exch. 389.
(*b*) *Bridger* v. *Berry*, 3 Taunt. 130. See 3 & 4 Anne, c. 9, s. 7.
(*c*) *The Guardians of Lichfield Union* v. *Green*, 26 L. J. Ex. 140.

not endorse and the same is subsequently dishonoured and not paid, no action will lie against them on the instrument;(*d*) though they are not discharged from the obligation to pay the amount of the customer's cheque (such negotiable instrument having been given in respect of a pre-existing debt) unless the customer has been guilty of laches.(*e*)

And by the Bills of Exchange Act, 1882, s. 58, sub-sect. 3, a transferor, by delivery of a bill, is made to warrant to his immediate transferee, being a holder for value, that the bill is what it purports to be,(*f*) that he has a right to transfer it, and that at the time of transfer he was not aware of any fact which rendered it valueless.(*g*)

2. *As between the Drawer and Payee.*—If the payee of a cheque elects to receive from the bankers in payment of the cheque a bill of exchange or country bank-note, or other negotiable instrument, instead of cash, the debt between him and the drawer is discharged whatever happens.(*h*) Where, however, the bank is directed by their customer's cheque to pay only in bills or promissory notes, which the payee, having no option, accepts, the liability of the original debt revives on the subsequent dishonour of the bills or notes.(*i*)

3. *As between Banker and Payee.*—If the payee receives from the banker, by way of payment of the cheque he

(*d*) Bills of Exchange Act, 1882, s. 58.

(*e*) See BYLES on "Bills," 13th edit., Chapter xii., on "Transfer;" *Camidge* v. *Allenby*, 6 B. & C. 373; *Ward* v. *Evans*, 2 Lord Raym. 928; *Guardians of Lichfield Union* v. *Green*, *supra*. "Taking a note for goods sold is a payment, because it was part of the original contract, but paper is no payment, when there is a precedent debt; for when such a note is given in payment, it is always taken to be given under this condition, to be payment, if the money be paid thereon in convenient time:" HOLT, C.J., in *Ward* v. *Evans*, *supra*.

(*f*) *Gompertz* v. *Bartlett*, 23 L. J. Q. B. 65; *Pooley* v. *Brown*, 31 L. J. C. P. 134; *Leeds Bank* v. *Walker*, 11 Q. B. D. 84.

(*g*) *Camidge* v. *Allenby*, *supra*; *Smith* v. *Mercer*, L. R. 3 Ex. 51. So in the case of a country bank-note, if the banker is aware that the country bank has stopped payment.

(*h*) *Vernon* v. *Bouverie*, 2 Show. 296; *Smith* v. *Ferrand*, 7 B. & C. 19; *Strong* v. *Hart*, 6 B. & C. 160.

(*i*) *Marsh* v. *Peddar*, 4 Camp. 257.

holds, a bill of exchange, or other negotiable instrument, to which the banker is, or makes himself, a party, he may sue the banker on the instrument in the event of dishonour or non-payment, provided he does all that the ordinary holder of such a security has to do ; if he omits any of the requisite formalities the banker is discharged. If he receives a negotiable instrument to which the banker is not, or does not make himself, a party, the banker is not liable on the instrument,(a) nor would he be liable otherwise,(b) except under the sub-section above cited.

Cashing over the Counter.—Where a cheque is cashed over the counter, the money ceases to be the money of the banker, and he cannot revoke or recall the payment, although he should immediately discover that the drawer's account is considerably overdrawn.(c)

Part payment of Cheque.—A bill of exchange may be accepted for part only of the sum for which it is drawn,(d) but whether a banker, who has not sufficient funds of his customer in his hands to pay his cheque in full, is bound or justified in making payment in part, has not been determined in our courts. On principle, it would seem, that a banker would not be bound or justified in doing so.(e)

(a) Bills of Exchange Act, 1882, s. 58.
(b) *Fydell* v. *Clark*, 1 Esp. 447 ; *Camidge* v. *Allenby*, *supra*.
(c) *Chambers* v. *Miller*, 13 C. B. (N.S.) 125 ; 32 L. J. C. P. 30 ; 3 F. & F. 202 ; *Pollard* v. *Bank of England*, L. R. 6 Q. B. 623.
(d) *Wegersloffe* v. *Keene*, 1 Strange, 214.
(e) With respect to this point, Mr. Morse observes in his "Treatise on Banks and Banking," p. 257, "If the bank has not funds enough to the credit of the drawer to pay his cheque in full, it is not obliged to make payment in part. *Murray* v. *Judah*, 6 Cowen, 490. Whether or not it would be justified in doing so may be questioned. There is no authority on the point. Nor would banks often try to exercise such a right. If they can do so, they are obviously bound to indorse the amount of the payment on the cheque, which would of course still remain in the payee's hands, and which would otherwise on its face appear still to be good for the full value named in it, to the possible deception and loss of the drawer or of innocent third parties. But the better rule, perhaps, would be, to save misunderstandings and complications, that if a bank cannot pay in full, it not only may not, but must not, pay at all. The drawer has not requested it to make a part payment. He has demanded that it do a

It has already been stated,(*f*) that when there are not sufficient assets in the banker's hands to pay a cheque in full, he should not say to the holder, "not enough to meet it by such a sum," and so enable the holder to pay in the deficiency to the drawer's account, and obtain payment of the cheque to the prejudice of his other creditors.(*f*)

hands, and which would otherwise on its face appear still to be good for the full value named in it, to the possible deception and loss of the drawer or of innocent third parties. But the better rule, perhaps, would be, to save misunderstandings and complications, that if a bank cannot pay in full, it not only may not, but must not, pay at all. The drawer has not requested it to make a part payment. He has demanded that it do a certain act; to wit, pay a certain sum of money on his account. If it will not do this act according to the terms of the authority embodied in the request, it by no means follows that it is authorized to substitute for it a partial performance, or in fact a materially different act. Power to pay only a part of a sum is not necessarily implied in an order, expressed without alternative, to pay that specific sum." In Scotland the law is otherwise: see Bills of Exchange Act, 1882, s. 53 (2) (*British Linen Co.* v. *Carruthers*, 10 Rettie 923), and the banker must pay to the extent of the drawer's balance.

(*f*) *Ante*, p. 7.

CHAPTER IV.

THE DISHONOURING BY BANKERS OF THEIR CUSTOMERS' CHEQUES.

IF a banker, having presented to him within banking hours a cheque, bearing the genuine signature of a customer whose funds in the bank at the time are sufficient to pay the amount for which the cheque is drawn,(*a*) refuses to pay, he is liable in substantial damages to the drawer ; but it will be a good answer to *an action to recover damages*, if the banker can convince a jury that, although he had, in point of fact, funds of the drawer's in his hands at the time of presentment of the cheque, yet that such funds had not been paid in long enough to have been in his hands for a reasonable time before the presentment. What is a reasonable time before presentment must be ascertained by the jury in each case, by reference to its particular circumstances : *e.g.*, the general magnitude and extent of the business at the bank, the pressure of business at the time, or on the previous part of the day in question, &c., &c.(*b*)

Also it is a defence to such action, that the drawer's assets have been exhausted, by the payment of bills accepted by him payable at the bankers ; and it is not necessary for the bankers to show any special authority or any further order, than that contained in such acceptances, to enable them to pay the amounts due upon the bills.(*c*)

(*a*) In the recent case of *Fontaine-Besson* v. *Paris Banking Company*, 8 T. L. R. 121, the Court refused to grant an injunction restraining the bank from honouring a customer's cheques. As to when the amount is not sufficient to pay the cheque in full, see *post*, p. 50. As regards the duty of one of several branches of a bank to honour cheques drawn upon another branch, see chapter on "Branch Banks."

(*b*) *Whitaker* v. *Bank of England*, 60 C. & P. 70 ; 1 C. M. & R. 744 ; *Marzetti* v. *Williams*, 1 B. & Ad. 415.

(*c*) *Kymer* v. *Laurie*, 18 L. J. Q. B. 218. See also *The Agra and Masterman's Bank* v. *Hoffman*, 34 L. J. Ch. 285.

The following case (*d*) may serve to illustrate the principles above laid down. On a certain day A. had standing in his name at his bankers a balance of 69*l*. 16*s*. 6*d*. About one o'clock on the same day, the sum of 40*l*. was paid into his account; a little after three o'clock, a cheque drawn by him was presented for payment, the sum being 87*l*. 7*s*. 6*d*. A clerk, after referring to a book, said there were not sufficient assets, but that the cheque might probably go through the Clearing House. The cheque was paid on the following day. At the trial of an action, brought by A. against the bankers, no actual damage was proved to have been sustained by A., and the jury found a verdict for the plaintiff, with nominal damages; the Court, however, refused to grant a new trial, as the dishonour of the plaintiff's cheque by the bankers, having in their hands funds sufficient to meet it at the time, was of itself an actionable wrong entitling him to damages.

"I cannot forbear to observe," said Lord TENTERDEN, C.J., on the motion for a new trial, "that it is a discredit to a person, and therefore injurious, in fact, to have a draft refused payment for so small a sum; for it shows that the banker had very little confidence in the customer. It is an act particularly calculated to be injurious to a person in trade. My judgment in this case, however, proceeds on the ground that the action is founded on a contract between the plaintiff and the bankers, that the bankers, whenever they should have money in their hands belonging to the plaintiff, or within a reasonable time after they should have received such money, would pay his cheques,

(*d*) *Marzetti* v. *Williams*, 1 B. & Ad. 415; S. P., *Rolin* v. *Steward*, 14 C. B. 595; 23 L. J. C. P. 148. In *Rolin* v. *Steward*, which was an action against bankers by a trader having assets in their hands for dishonouring three cheques amounting in the aggregate to 111*l*. 13*s*., and no special damage was proved, the jury gave 500*l*. damages. The Court suggested that the parties might relieve them from giving any ultimate opinion, but intimated they inclined to think the damages very large, whereupon it was agreed by the parties to reduce them to 200*l*.; and the judgment was entered up accordingly. As to the recovery of special damage, see *Larios* v. *Gurety*, L. R. 5 P. C. 346.

and there having been a breach of such contract, the plaintiff is entitled to recover nominal damages."

And Mr. Justice TAUNTON said: "The jury has found that when the cheque was presented for payment a reasonable time had elapsed to have enabled the bankers to enter the 40*l.* to the credit of the plaintiff, and, therefore, that they must or ought to have known that they had funds belonging to him. That was sufficient to entitle the plaintiff to recover nominal damages, for he had a right to have his cheque paid at the time when it was presented, and the bankers were guilty of a wrong by refusing to pay it. Independently of other considerations, the credit of the plaintiff was likely to be injured by the refusal of the defendants to pay the cheque; and as it was the duty of the defendants to pay the cheque when it was presented, and that duty was not performed, I think the plaintiff, who had a right to its being performed, is entitled to recover nominal damages. The case put in the course of the argument, of the holder of a cheque being refused payment, and called back within a few minutes and paid, is an extreme case, and a jury probably would consider that as equivalent to instant payment. That, however, is not the present case. Here the refusal to pay was not countermanded till the following day."

In order to justify a banker in refusing to honour a cheque of his customer, the customer being an executor, and drawing the cheque as executor, there must be a misapplication of the money intended by the executor, so as to constitute a breach of trust, and the banker must be cognizant of that intention; and the existence of a personal benefit to the banker, designed or stipulated for as a consequence of the payment, would be strong evidence that the banker was privy to the breach of trust.(*a*)

Where bankers had taken up bills for a customer on the

(*a*) *Gray* v. *Johnston*, L. R. 3 H. L. Cas. 1. The same rule it is submitted would apply to the payment of cheques drawn by other persons standing in a fiduciary position.

security of the produce of certain consignments, and by a course of dealing with him had permitted him to draw on his account current with them without reference to their advances on the consignments, they cannot, by charging his account with the advances, in the absence of express notice, treat it as overdrawn, and accordingly dishonour his cheques before the consignments are realized.(*b*)

By the Bills of Exchange Act, 1882, s. 75, the duty and authority of a banker to pay a cheque drawn on him by his customers are determined by a countermand of payment,(*c*) or by notice of the customer's death.(*d*) Under the Bankruptcy Act of 1883, a banker's authority to pay his customer's cheque is, also, revoked by a receiving order being made against him, or by notice that he has committed an act of bankruptcy.(*e*)

Stale or Overdue Cheque.—Where a stale or overdue cheque (*f*) is presented to a banker he is justified in not paying it without enquiry.(*g*)

Effect of Garnishee Order.—And where a banker had been served with a garnishee order attaching all moneys in his hands belonging to the plaintiff, it was held that he was not obliged to honour cheques drawn by the plaintiff against the balance in his hands over and above the judgment debt, and that his refusal to do so gave the plaintiff no cause of action.(*h*)

(*b*) *Cumming* v. *Shand*, 5 H. & N. 95; 29 L. J. Ex. 129. See also *Garnett* v. *McKewan*, L. R. 8 Ex. 10; 42 L. J. Ex. 1; 27 L. T. 560; 21 W. R. 57. *The Agra and Masterman's Bank* v. *Hoffman*, 34 L. J. Ch. 285.

(*c*) *Cohen* v. *Hale*, 3 Q. B. D. 371; *McClean* v. *Clydesdale Bank*, 9 App. Cas. 95.

(*d*) Upon the death of one partner in a firm having an account at a banker's, the surviving partner has a right to draw cheques upon the partnership account. *Backhouse* v. *Charlton*, 8 Ch. D. 444. If a banker pays before notice the payment is good. *Tate* v. *Hibbert*, 2 Ves. Jun. 118.

(*e*) Sections 9, 49, and 168.

(*f*) Bills of Exchange Act, 1882, ss. 35, 36.

(*g*) *Serle* v. *Norton*, 2 M. & Rob. 461.

(*h*) *Rogers* v. *Whitely*, 23 Q. B. D. 236.

Action by Married Woman.—An action will lie by a married woman against a bank for dishonouring cheques drawn by her on her separate estate deposited with it.(*a*) In the case of a banker having some, but not sufficient, assets to honour his customer's cheque, it would seem to be the practice in England for him not to honour the cheque *pro tanto*, though whether he would be entitled in law to refuse to do so has never been judicially decided. By the Bills of Exchange Act, 1882, s. 53 (2), a cheque in Scotland is made to operate as an assignment of the sum for which it is drawn in favour of the holder, and in that country a banker would, under such circumstances have to meet the cheque so far as he has assets available.(*b*)

Effect of Dishonour on Holder of a Cheque.—Where a cheque has been dishonoured by non-payment, notice of dishonour must be given to the drawer and each endorser, and every drawer or endorser to whom such notice is not given, is discharged.(*c*)

Notice of Dishonour.—Notice of dishonour in order to be valid and effectual must be given in accordance with the rules mentioned in the Bills of Exchange Act, 1882, s. 49.

When to be given.—It may be given as soon as the cheque is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless :

(*a*.) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour.

(*a*) *Summers* v. *City Bank*, L. R. 9 C. P. 381 ; 43 L. J. C. P. 261.
(*b*) *British Linen Company* v. *Carruthers*, 10 Rettie, 923.
(*c*) Bills of Exchange Act, 1882, s. 48. He is discharged both from his liability on the cheque and on the consideration. *Bridges* v. *Beny*, 3 Taunt. 130 ; *Peacock* v *Pursell*, 14 C. B. (N.S.) 728.

(*b*.) Where the person giving and the person to receive notice reside in different places, the notice is sent off the day after the dishonour, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.(*d*)

When delay in giving Notice is Excused.—Delay in giving notice is excused where it is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases, the notice must be given with reasonable diligence.(*e*)

When Notice dispensed with.—Notice of dishonour of a cheque is dispensed with,(*e*) when, after the exercise of reasonable diligence, notice as required by the Bills of Exchange Act cannot be given, or does not reach the drawer or endorser sought to be charged.

It may also be dispensed with by a waiver express or implied; and where the banker is, as between himself and the drawer, under no obligation to pay the cheque; as where he has not been put in funds with which to pay it, the holder need not give notice of dishonour as against the drawer.(*f*)

(*d*) Bills of Exchange Act, 1882, s. 49, sub-sect. (12).
(*e*) Bills of Exchange Act. 1882, s. 50.
(*f*) *Carew* v. *Duckworth*, L.R. 4 Ex. 313; *Wirth* v. *Austen*, L. R. 10 C. P. 689.

CHAPTER V.

PRESENTMENT OF CHEQUES.

Banking hours.

The Courts of law take judicial notice of what are banking hours in the city of London.(*a*) What are banking hours in other parts of the metropolis, and in provincial towns, must be proved in each case in which the question becomes material.(*b*) Government cheques are not payable at the Bank of England after three o'clock in the afternoon. By the Bank Holiday Act, 1871, the days appointed and kept as bank holidays will be excluded as days for the transaction of business. A notice left at a bank after business hours only operates as notice to the bank from the time when in the ordinary course of business it is opened and read.(*c*)

Within what Time after it is received by the Payee a Cheque ought to be presented for Payment.—Somewhat different considerations arise in this respect, according to the character of the parties between whom the question is raised.

1. *As between the payee and the drawer* the rule has always been that the drawer is not discharged, that is, the payee does not lose the remedy against the drawer, by reason of non-presentment within any prescribed time, short of six years after taking the cheque, unless by his delay the drawer, having had in the bank sufficient funds to meet the cheque if it had been duly presented, has been prejudiced or his position altered for the worse, as for instance, by the insolvency of the banker in the interval—

Insolvency of bank.

(*a*) *Parker* v. *Gordon*, 7 East, 385; *Jameson* v. *Swinton*, 2 Taunt. 225.
(*b*) *Hare* v. *Henty*, 10 C. B. (N.S.) 365.
(*c*) *Calisher* v. *Forbes*, 41 L. J. Ch. 56.

in which event the drawer was held to be absolutely discharged, even though the banker subsequently paid, say, twenty shillings in the pound.(*d*) But by section 74, sub-section (1) of the Bills of Exchange Act, 1882, it is now provided that where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid, and suffers actual damage through the delay,(*e*) he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid. And by sub-section (3) of the same section the holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such banker, to the extent of such discharge, and entitled to recover the amount from him.

The effect of these two sub-sections appears to be that the drawer, if he had sufficient funds to meet the cheque if duly presented, is still absolutely discharged on failure of the bank, but the holder may prove against the bank for the amount of his cheque. Nevertheless, the payee should present the cheque within a reasonable time, not only to provide against the contingency of the bank failing, but to guard against any possible revocation of the banker's authority to pay it, as by their receiving notification of their customer's death,(*f*) And, further, the payee of the cheque must bear in mind that he may be put to much trouble and inconvenience by his neglect to present the cheque within a reasonable time, because bankers in general understand it as a rule of business not to pay old

(*d*) *Robinson* v. *Hawksford*, 9 Q. B. 52; *Hopkins* v. *Ware*, L. R. 4 Ex. 268; *Alexander* v. *Burchfield*, 7 M. & G. 1067; *Serle* v. *Norton*, 2 M. & Rob. 401; *Laws* v. *Rand*, 3 C. B. (N.S.) 442; 27 L. J. C. P. 76.

(*e*) As to the failure of the bank, see, on this section, Chalmers on "Bills" (4th edit.), p. 247.

(*f*) See Bills of Exchange Act, 1882, s. 75.

cheques without inquiry; also, the drawer's acconnts may have been overdrawn, or he may have ceased to have an account with the banker in the interval; and, in either of these cases, the payee might be obliged to resort to an action to recover the value. Again the drawer might in the interval have become bankrupt or insolvent, in neither of which cases would it be probable that the payee would recover the full value.

On the other hand, although, where the payee keeps the cheque beyond a reasonable time without presentment, and the bankers become insolvent in the meantime, the drawer is discharged; yet, if within banking hours of the day after he receives the cheque the payee presents it, and finds that the bankers have become insolvent between his receipt of the cheque and the carrying it for presentment, the drawer is not discharged, and the payee may recover; for here, though both parties are innocent, yet it is just that the payee should be paid his debt, the right to which he has done nothing to forfeit, since he has conformed to the strictest rule that applies to any holder of a cheque, by presenting in the course of the day after his receipt of it.(a)

What is Reasonable Time.—In determining what is a reasonable time regard must be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.(b)

Where the cheque is not received till after banking hours the time allowed the payee to present it does not commence to run till the first day after that on which he actually received it.(c)

The holder of a cheque, whether payee or other holder, does not obtain any more time by sending the cheque to his own bankers and presenting it through them; but in all cases, to be safe, he must present within banking hours of the day next after the day of the delivery of the cheque

(a) *Boddington* v. *Schlencker*, 4 B. & Ad. 752.
(b) Bills of Exchange Act, 1882, s. 74, sub-sect. (3).
(c) *Bond* v. *Warden*, 1 Coll. 583.

to him, whether he presents it himself or by a servant, or through his bankers.(*d*) There is, of course, nothing to prevent the drawer agreeing with the payee to extend the time for presentment, by his assent, either express or implied.(*a*) On the other hand, the payee, by transmitting a cheque on another bank to his own bankers, has not less time to present it in than he would have had, if he had kept it and presented it himself; and although the bankers do not send it to the Clearing House the same day, the drawer is not discharged.(*a*)

When a creditor takes from his debtor's agent, on account of his debt, the cheque of the agent, he is bound to present it for payment within a reasonable time; and if he fails to do so, and by the delay alters for the worse the position of the debtor, the debtor will be discharged, although he was no party to the cheque.(*e*)

Where Payee and Drawee do not reside in the same Place.—Where the payee of a cheque and the drawee do not reside in the same place, the rule as to the time in which the cheque is to be presented has been stated to be this: the payee should forward it to his bankers or other agent by the next day's post, and they should present it on the day after such receipt.(*f*) The cheque should be sent by the bankers direct to the drawee, for the time for presenting it cannot be increased by their permitting it to circulate through branches or agents of the bank.(*g*) But a country banker receiving a cheque drawn upon another country banker may, however, instead of transmitting it by post for presentation to the banker on whom it is drawn, send the cheque to his London agent to pass through the Clearing House.(*h*)

(*d*) *Alexander* v. *Burchfield*, 7 M. & G. 1061; *Hare* v. *Henty*, 10 C. B. (N.S.) 65; 30 L. J. C. P. 302.

(*e*) *Hopkins* v. *Warr*, L. R. 4 Ex. 268; 38 L. J. Ex. 147.

(*f*) *Bond* v. *Warden*, 1 Coll. 583; *Rickford* v. *Ridge*, 2 Camp. 537; *Heywood* v. *Pickering*, L. R. 9 Q. B. 428; *Hare* v. *Henty*, *supra*.

(*g*) See BYLES on "Bills" (15th edit.), p. 22; *Moule* v. *Brown*, 4 Bing. N. C. 266.

(*h*) *Hare* v. *Henty*, *supra*; *Prideaux* v. *Criddle*, L. R. 4 Q. B. 455,

2. *As between transferee and Payee.*—When the person who holds the cheque is not the payee, but has received the cheque from the payee or from some intermediate holder, and upon the cheque being dishonoured seeks to recover from the person from whom he received it, the rule is that he should present it within banking hours on the day following that on which he received it, provided there are the ordinary means of doing so.(*a*)

3. *As between Transferee and Drawer.*—As against the drawer, the transferee stands in the same position as the payee, and he must present the cheque within the same time as the payee would have had to present it.(*b*)

Place of Presentment.—*Presentment* must in general be made, not only within banking hours, but at the banking-house, of the bankers on whom the cheque is drawn.(*c*) But the institution called the Clearing House, and the practice of using it, which is now very general, if not universal, among the bankers of the metropolis, have introduced a small divergence from the rule. Since 1858, the country bankers too have very generally adopted the Clearing House, for the presentation and collection of cheques payable in different parts of the country.(*d*)

The Clearing House is a large room fitted with drawers; each banker using the house has one of these, marked with his name or firm. In the morning at nine o'clock and at half-past three o'clock in the afternoon of each week-day, a clerk from each banker using the house attends, bringing with him the cheques on other banks that have been paid into his bank since the last clearing; these he deposits in the drawers of the respective banks on which

(*a*) *Moule* v. *Brown*, 4 Bing. N. C. 268.
(*b*) *Robson* v. *Bennett*, 2 Taunt. 388; *Moule* v. *Brown*, *supra*.
(*c*) Bills of Exchange Act, 1882, s. 45, sub-sect. (4). Where the bank has branches the cheque must be presented to that particular branch upon which it is drawn. *Woodland* v. *Feare*, 7 E. & B. 579. See also Chapter on "Branch Banks."
(*d*) *Hare* v. *Henty*, 10 C. B. (N.S.) 65; 30 L. J. C. P. 302.

they are drawn ; he then credits their accounts separately with the different amounts of the cheques they have placed in his drawer, as against his bank. Balances are then struck from all the accounts, and the claims between the various banks transferred from one to another, until they are so wound up and mutually cancelled, that each clerk has only to settle, in cash, with two or three others, and thus, by means of comparatively small sums in money, the balances are immediately paid. When cheques are paid into a bank after clearing time,(*e*) they are sent to the respective houses on which they are drawn, when, if the bankers intend to pay them, they are "marked," which is understood as an engagement that they will be passed, or paid at the Clearing House next day,(*f*) and that they have priority before the cheques which come in on that day.(*g*) Formerly, it was held that this marking was equivalent to an acceptance, and that the bankers so marking rendered themselves liable to pay the cheque. Now, however, by the Bills of Exchange Act, 1882, s. 17, an acceptance must be written on the bill and be signed by the drawee, though the mere signature of the drawee is sufficient.

From this practice, as above detailed, it is obvious that a large portion of the cheques which are paid into banks in London by customers, in order that the amounts may be carried to their accounts as money, is never presented by such bankers, as bearers, at the banking houses on which they are drawn ; but that, instead, is established the practice of placing them in the drawers at the Clearing House belonging to the latter banks. In other words,

(*e*) See 4 B. & Ad. 754.

(*f*) M'Culloch, Commerc. Dict. *voc.* Clearing House, 4 B. & Ad. 753 ; *Warwick* v. *Rogers*, 5 M. & G. 348 ; *Robarts* v. *Tucker*, 16 Q. B. 570 ; *Bellamy* v. *Marjoribanks*, 7 Exch. 389 ; *Boddington* v. *Schlencker*, 2 B. & Ad. 752.

(*g*) *Robson* v. *Bennett*, 2 Taunt. 388 ; *Stevens* v. *Hill*, 5 Esp. 247 ; *Goodwin* v. *Robarts*, L. R. 10 Ex. 351. The banker's consent to pay, which is inferred from the cancellation of the cheque, is not binding on him as against the holder and may be withdrawn. See *Prince* v. *Oriental Bank*, 3 App. Cas. 325 ; *Warwick* v. *Rogers*, 5 M. & G. 340.

they are presented to the clerks of the latter, who attend at the Clearing House; and such presentment has been held to be sufficient.(a)

Presentation of Country Cheques through the Clearing House.—Cheques on country bankers situate at a distance from each other, when intended for collection in London, are crossed with the name of a London banker to whom they are sent by post, and who presents them in regular course at the country Clearing House to the London correspondent of the country banker whose correspondent's name is printed on the cheques. The London agent of the country banker does not mark them at once, or, in other words, as with cheques upon a London banker, does not give credit for them, but he transmits them by the next post to the country banker, who advises his London agent, by return of post, to debit his account with the same, and the London agent thereupon gives a draft for the amount to the banker from whom he received the cheques. The country Clearing House is used as a convenient medium for the presentment of country cheques to the drawees.(b)

A., a banker at Worthing, received from B., a customer, a cheque drawn upon C., a banker at Lewes, distant about eighteen miles from Worthing, on the morning of Friday, the 8th of July, 1859, and sent it that evening by post to his London correspondent, D., for presentment through the country Clearing House. D.'s clerk handed the cheque at the Clearing House on the morning of Saturday, the 9th of July, to the clerk of E., the London correspondent of C., the drawer of the cheque, who sent it down by post of that evening to C., and it was held that the presentment was in due time.(b)

The following cases on the same subject may also be consulted:—

B., on Wednesday, the 6th of May, 1864, drew a cheque

(a) *Reynolds* v. *Chettle*, 2 Camp. 596.
(b) *Hare* v. *Henty*, 10 C. B. (N.S.) 65; 30 L. J. C. P. 302.

on his bankers, Morgan and Company, of Ross, Herefordshire, payable to Mr. Watkins, or bearer, with the memorandum at the foot, "London agents, Messrs. Barclay and Company." He paid the cheque on the same day to Watkins, in Monmouth, a post town ten miles from Ross. Watkins kept it from that day until Friday, when he paid it to the credit of his account at his bankers, Bailey and Company, Monmouth. They sent it by the post of Friday to the City Bank, their London agents, to be presented to the London agents of the Ross Bank, through the country Clearing House. The City Bank, on the following morning, accordingly presented it to Messrs. Barclay at the Clearing House, and were then informed that Morgan and Company had closed their account with them on the Thursday preceding, and the City Bank then sent it back by post to Morgan and Company, at Ross, where it arrived on Sunday morning, the 10th of May. Morgan and Company, however, kept it till the 15th, when it was returned by them to the City Bank, through the post, dishonoured. The City Bank received it on the 16th, and by the same day's post sent it to Bailey and Company, who, on the 19th, gave notice of its dishonour to the drawer. Morgan and Company paid money over the counter and to country bankers by letter till the 13th, when they stopped payment. B., from the time he drew the cheque down to their stoppage, had a balance more than sufficient to cover the amount of the cheque. In an action on the cheque by Bailey and Company against B., the Court held that there had been laches on the part of the holder in presenting or giving notice of its dishonour, and that the drawer was therefore discharged.(c)

It was intimated by the Court that it was reasonable to send the cheque to the London agents of Morgan and Company, but that it ought to have been returned to Bailey and Company, when it was found that Barclay and

(c) *Bailey* v. *Bodenham*, 16 C. B. (N.S.) 288 ; 33 L. J. C. P. 252.

Company had ceased to be the agents of Morgan and Company.(a)

The payee of a cheque drawn on Monday, the 4th of June, on a bank at Falmouth, paid it on Tuesday, the 5th, to the credit of his account in a bank at Truro, which is about ten miles from Falmouth. On Tuesday, the 5th, the Truro Bank, having no agent at Falmouth, sent the cheque to Barclay and Company, their London agents, who received it on Wednesday, the 6th, and handed it through the Clearing House to the London agents of the Falmouth Bank; they forwarded it to the Falmouth Bank, who received it on Thursday, the 7th, and debited the drawer's account with the amount and cancelled the cheque, and by post of the same day wrote to their London agents to pay it on their account. On the morning of that day their London agents stopped payment, and the London agents of the Truro Bank wrote to the Falmouth Bank requesting them to return the cheque or pay it. On Friday, the 8th, the Falmouth Bank wrote refusing to do either, and on the following day stopped payment. On Saturday, the 9th, the Truro Bank gave the payee notice of its dishonour: the Court of Queen's Bench held, that the Truro Bank was entitled to debit the payee with the amount of the cheque, inasmuch as it was not bound to send the cheque direct to the Falmouth Bank, and therefore it was presented in due time, and notice of dishonour was given to the payee in due time.(b)

When Delay in Presenting is Excused.—By sect. 46, subsect. (1), of the Bills of Exchange, 1882, delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(a) *Bailey* v. *Bodenham*, 16 C. B. (N.S.) 288; 33 L. J. C. P. 252.
(b) *Prideaux* v. *Criddle*, 10 B. & S. 515; L. R. 4 Q. B. 455. See also *Pollard* v. *Bank of England*, L. R. 6 Q. B. 623; *National Bank of America* v. *Bangs*, 8 Amer. R. 349.

When non-presentment excused.—Presentment may be excused by waiver, expressed or implied; but the fact that the holder has reason to believe that the cheque will on presentment be dishonoured, does not dispense with the necessity for presentment.(*c*) And as regards the drawer presentment is not necessary when the drawee is not bound as between himself and the drawer to pay the bill, and the drawer has no reason to believe that the bill would be paid if presented. So when a cheque is drawn on a bank and the drawee has no funds there to meet it, and no reason to expect that it will be honoured it is not necessary that their should be a presentment of it to charge the drawer.(*d*)

Presentment by Post.—Sending a cheque in a letter by post to the drawee is a good presentment, but there ought to be a notice of dishonour if the money is not received by return of post.(*e*)

Presentation of Stale or Overdue Cheque.—As has been previously stated, a banker, to whom an overdue or stale cheque is presented for payment, is not bound to cash the same without consulting the drawer.

By the Bills of Exchange Act, 1882, s. 36, sub-sect. (2), where an overdue bill is negotiated it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.(*f*) And by sub-sect. (3), a bill payable on demand is deemed to be overdue when it appears, on the face of it, to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact. By virtue of

(*c*) Bills of Exchange Act, 1882, s. 46, sub-sect. (2) (*a*) and (*e*).

(*d*) Section 46 (2), (*c*); *Saul* v. *Jones*, 28 L. J. Q. B. 37; *Turner* v. *Samson*, 2 Q. B. D. 23.

(*e*) *Bailey* v. *Bodenham*, 16 C. B. (N.S.) 288; 33 L. J. C. P. 252; *Prideaux* v. *Criddle*, *supra*; *Heywood* v. *Pickering*, L. R. 9 Q. B. 428; Bills of Exchange Act, 1882, s. 45 (8).

(*f*) Mere absence of consideration is not an equity which attaches to a bill: *Sturtevant* v. *Ford*, 4 M. & G. 101; *Ex parte Swan*, L. R. 6 Eq. 344.

section 73 of the same Act, this enactment is made to apply to cheques, and consequently a person who takes a cheque overdue, in the sense that it has been in circulation for an unreasonable time, takes it subject to all defects of title.

It has been held that an interval of six, (a) and indeed of eight, days, (b) is not necessarily an unreasonable length of time, but it has been decided that a cheque taken two months after date is stale. (c)

When presentable for Payment.—Bankers are not justified in paying a cheque which is presented to them before the day on which it purports to have been drawn, or bears date, for by so doing they may be liable to pay over again the amount of the cheque; *e.g.*, if it has been lost by the payee, the banker must repay him, it being out of the usual course of banking business to cash cheques before the day of the date. (d)

No days of grace allowed on cheques.

On the other hand, no days of grace are allowed on the presentment of a cheque. (e)

Cheques drawn by the Treasury on the Bank of England are not payable after three o'clock P.M., (f) and they usually bear a memorandum, to this effect, printed at the top of the paper on which they are drawn.

A cheque of the ordinary kind is strictly payable, or at least intended to be paid, immediately on demand; and this appears to be universally the case, with the exception of cheques drawn on bankers in the City of London, where the usage of trade establishes the rule, that a cheque may

(a) *Rothschild* v. *Corney*, 9 B. & C. 388.

(b) *London and County Bank* v. *Groom*, 7 Q. B. D. 288; 51 L. J. Q. B. 224.

(c) *Serrel* v. *Derbyshire Railway Company*, 9 C. B. 811.

(d) *Da Silva* v. *Fuller*, CHITTY on "Bills," (10th edit.), p. 180, cited per PARKE, B., in *Morley* v. *Culverwell*, 7 M. & W. 178.

Days of grace on bills.

(e) Bills of Exchange Act, 1882, s. 14. A right of action does not accrue on a bill of exchange until after the expiration of the whole of the last day of grace, although a right to protest and to give notice of dishonour accrues immediately on refusal of payment. *Kennedy* v. *Thomas* [1894], 2 Q. B. 759.

(f) 4 & 5 Will. 4, c. 15, s. 21.

be retained by the banker, on whom it is drawn, until five o'clock P.M. of the day on which it is presented, and, if there are no assets, it may then be returned to the person presenting it, and that too, although it has been, in the first instance, by mistake cancelled, as intended to be honoured. Thus, where a plaintiff paid into the bank of V. & Co., a cheque drawn upon the defendant's house, and V.'s clerk took it to the Clearing House to be paid, and put it into the defendant's drawer, and received it back before five o'clock cancelled, but with a memorandum, *cancelled by mistake*,(*g*) written under, and it was proved that several cheques drawn by the same person had been paid on that day, but that, when the cheque in question came in, the clerk who received it immediately cancelled it, thinking it was to be paid, but finding, in a few minutes, that no more of such cheques were to be paid, wrote the memorandum above mentioned, and it was returned to V.'s clerk accordingly. The Court held that, notwithstanding the cancelling, the defendant, according to the usage proved at the trial, had until five o'clock to return it, and that, having so returned it, this amounted to a refusal to pay.(*h*) A cheque given after banking hours on the 25th of February, upon an understanding that it should not be presented for a few days, is presented in time on the 10th of March.(*i*)

(*g*) See per BULLER, J., *Leftley* v. *Mills*, 4 T. R. 175.
(*h*) *Fernandez* v. *Glynn*, 1 Camp. 426, n.
(*i*) *Carew* v. *Duckworth*, L. R. 4 Exch. 313.

CHAPTER VI.

CROSSED CHEQUES.

Practice as to crossing cheques before alteration by statute.

PREVIOUSLY to the alteration of the law of crossed cheques effected by the statutes hereinafter referred to, in the metropolis, and in many other places, it was a common practice for a person drawing a cheque, to write across the cheque the name of a banker, ordinarily the banker of the party in whose favour it was drawn. The *intention* of this was to advertise the bankers upon whom the cheque was drawn that they were to cash the cheque only to or in favour of the banker whose name so appeared written across the instrument; the reason for adopting the precaution was to prevent its being paid to a wrongful bearer, *e.g.*, one who had found it, or got possession of it by fraud or felony.

If, however, a cheque so crossed was handed to another person as bearer, there was no objection to his erasing the name of the banker that he found upon it, provided he substituted the name of another banker.(*a*)

It was not unusual to write across a cheque "——— and Co.," leaving a blank space on the left hand side of the word, "and," in order that it might be filled in with the name of the banker through whom the payee, or any one to whom he might pass the cheque, intended that the cheque should be presented; and when so crossed, as in the former case, the banker on whom the cheque was drawn was in the habit, in London and other places, of refusing to cash the cheque, if presented otherwise than through *the* banker; and so, if the blank were not filled

(*a*) *Stewart* v. *Lee*, M. & M. 158.

up, the practice was, that it was only paid when presented through *some* banker.(*b*)

There was, it was held, no obligation on a banker on whom a cheque was drawn, arising either from usage or otherwise (in the absence of a special usage or a special agreement to that effect), to pay a cheque only through the bankers, with whose name they found it crossed in their customer's handwriting; consequently they were not liable to an action at the suit of the drawer, as for a violation of duty, if they paid it otherwise, although the drawer might have been, in consequence of such payment by them, subject to a loss, and that the crossing of a cheque, payable to bearer, with the name of the banker did not restrict its negotiability to such banker alone.

Such crossing was, however, so far a protection to the owner of the cheque, that it was considered that the banker upon whom the cheque was drawn ought not to have paid it, except through a banker; and that if he did so, and the person actually presenting it turned out not to be the lawful owner, the circumstance of his so paying would have been strong evidence of negligence on the part of the banker, in the event of his seeking to claim credit against his customer for the amount.(*c*)

(*b*) Such crossing had not the effect of affecting the bankers whose name was written across it, and into whose bank it was paid, with knowledge that the sum mentioned in it was the money of the payee. Thus, when C. drew a cheque on his banker, payable to A. and B., assignees of P., and crossed it with the name of their bankers, with whom they had an account as assignees; B., who had a private account with the same bankers, paid in the cheque to that account: the Court held, that the bankers were justified in applying it to that account, because, according to the usage of trade and of bankers, the crossing with the name of the payees' bankers was no notification to them that the money was the money of the payees. *Stewart* v. *Lee*, M. & M. 158.

(*c*) The history, origin and legal effect of crossing cheques are stated in the judgment of the Court in *Bellamy* v. *Marjoribanks*, 7 Exch. 389, as follows:—

"The crossing a cheque cannot operate as an indorsement to the banker, whose name is used, because it was not written with any intent to transfer the property in the cheque to him, and it wants the essential part of an indorsement, the delivery of the instrument to the indorsee. And we think that it cannot be well supposed that the usage is to be considered as equivalent to the direction by the holder or drawer to the drawee, not to pay to the bearer, but to a particular person only—for

Statute as to crossing cheques.

Such having been adjudged to be the common law on this subject, the 19 & 20 Vict. c. 25, was first passed to alter it. That statute, after reciting that doubts had arisen as to the obligations of bankers with respect to cross-written drafts, and that it would conduce to the ease of commerce, the security of property, and the prevention of crime, if drawers or holders of drafts on bankers, payable to bearer or to order on demand, were enabled effectually to direct the payment of the same to be made only to or through some banker, enacted, that in every case where a draft on any banker, made payable to bearer or to order

then the cheque would be altered in a manner which would take it out of the exemption of the Stamp Act (55 Geo. 3, c. 184), Sched. I., which applies to cheques payable to bearer only, and the bankers to whom it was addressed could not be bound to pay to the person named. We are, therefore, of opinion that crossing the cheque with the name of a banker cannot have the effect of restricting its negotiability to such banker only. To hold it to have this effect, would be to render the instrument no longer a cheque."

"It was agreed, on all hands, that the practice of crossing cheques originated at the Clearing House; the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers, so as to enable the Clearing House clerks to make up the accounts. It is quite clear that this had nothing whatever to do with the restriction of the negotiability, for, at the time when this was done, the cheques were in the course of payment or presentation for payment, and all their negotiability was at an end. The establishment of the Clearing House is comparatively modern, and was within the memory of several of the witnesses. It afterwards became a common practice to cross cheques which were not intended to go through the Clearing House at all with the name of a banker, or with the words '—— & Co.,' leaving the rest in blank, and a custom or usage has certainly sprung up in regard to this also. All the witnesses agreed as to the fact of the existence of such a custom, and we think that the great preponderance of evidence on both sides tended to show the custom to be that which is reported to have been stated by some of the jury in the case of *Stewart* v. *Lee*, M. & M. 158, namely, that, when a cheque is crossed, bankers generally refuse to pay it to anyone except a banker, and if they do pay it to a person not a banker, they consider that they do it at their peril, in the event of the party to whom the payment is made not being entitled to receive it; that the object is to secure the payment, not to any particular banker, but to a banker, in order that it may be easily traced for whose use the money was received; and that it was not intended thereby at all to restrict the circulation or negotiability of the cheque, but merely to compel the holder to present it through a quarter of known respectability and credit. We are strongly inclined to think, on a full inquiry, the usage will turn out to be no more than this; and, considering the custom in this point of view, the crossing is a mere memorandum on the face of the cheque, and forms no part of the instrument itself, and in no way alters its effect. There can be no doubt that such a usage is highly beneficial to the public."

on demand, bears across its face an addition, in written or stamped letters, of the name of any banker, or of the words "and company," in full or abbreviated, either of such additions shall have the force of a direction to the bankers upon whom such draft is made, that the same is to be paid only to or through some banker, and the same shall be payable only to or through some banker.

Shortly after the passing of this statute, the Court of Common Pleas and the Exchequer Chamber decided that the crossing on the cheque was not an integral part of the cheque, and consequently its erasure did not amount to a forgery.(*a*) It was therefore enacted by the 21 & 22 Vict. c. 79, s. 1, that whenever a cheque or draft on any banker, payable to bearer or to order on demand, should be issued, crossed with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, such crossing should be deemed a material part of the cheque or draft, and, except as thereinafter mentioned, should not be obliterated, added to, or altered, by any person whomsoever, after the issuing thereof; and the banker upon whom such cheque or draft should be drawn should not pay such cheque or draft to any other than the banker with whose name such cheque or draft should be so crossed, or, if the same should be crossed as aforesaid without a banker's name, to any other than a banker.

Then, by section 2, whenever such cheque or draft should have been issued uncrossed, or crossed with the words "and company," or any abbreviation thereof, and without the name of any banker, a lawful holder of such cheque or draft, while it remained uncrossed, or crossed with the words "and company," or any abbreviation thereof, without the name of any banker, might cross it with the name of a banker; and when a cheque or draft should have been issued uncrossed, a lawful holder might cross it with the

(*a*) *Simmons* v. *Taylor*, 2 C. B. (N.S.) 528 27 L. J. C. P. 45; affirmed on appeal, 4 C. B. (N.S.) 463.

words "and company," or any abbreviation thereof, with or without the name of a banker; and any such crossing as in that section mentioned should be deemed to be a material part of the cheque or draft, and should not be obliterated, or added to or altered, by any person whomsoever, after the making thereof; and the banker upon whom the cheque or draft should have been drawn, should not pay such cheque or draft to any other than the banker with whose name the cheque or draft should have been so crossed.

By section 3 persons obliterating, altering, or adding to, a crossing on a cheque or draft, with intent to defraud were to be held guilty of felony.(*a*)

It was held that neither of these acts restricted the negotiability of the cheque; and, further, that although the drawer was protected from loss in the event of his banker paying a cheque crossed specially to a bank other than the one specified, it gave no right of action to the payee, if he had ceased to be the lawful holder of such cheque by reason of its having got into the hands of a *bonâ fide* holder for value before it was presented.(*b*) This defect was remedied by the Crossed Cheques Act of 1876, which enabled the payee or any lawful holder to write across it the words "not negotiable,"(*c*) the effect of which was to secure his remaining the "true owner" of the cheque even as against a subsequent *bonâ fide* holder for value, who had received it, either directly or indirectly, from a holder with a defective title,(*d*) and therefore enabled him, as the last lawful holder, to sue the drawee bank, under

(*a*) This section was repealed by the 24 & 25 Vict. c. 95, but re-enacted by the 24 & 25 Vict. c. 98, s. 25, defining the punishment on conviction to be penal servitude for life, or for three years (by 27 & 28 Vict. c. 47, s. 2, to be not less than five years, and by 54 & 55 Vict. c. 69, s. 1, again reduced to not less than three years), or imprisonment for two years, with or without hard labour, and with or without solitary confinement.

(*b*) *Smith* v. *Union Bank of London*, L. R. 10 Q. B. 291; 45 L. J. Q. B. 149; 24 W. R. 194. See also *Bobbet* v. *Pinkett*, 1 Ex. D. 368; 45 L. J. Ex. 555; 24 W. R. 711.

(*c*) 39 & 40 Vict. c. 81, s. 5.

(*d*) For definition of "Defective title," see Bills of Exchange Act, 1882, s. 29. Of course in the case of a forged bill a holder would have *no* title and there could be no "true owner." See Bills of Exchange Act, 1882, s. 24.

section 10, for paying the cheque otherwise than to the banker to whom the same had been crossed. The Crossed Cheques Act, 1876, repealed both the before-mentioned statutes, but practically re-enacted their provisions. This Act is itself repealed by the Bills of Exchange Act, 1882; sections 76—82 of that Act codifying the law as to crossed cheques, but the drawee banker will still be liable in such a case by virtue of section 79, sub-sect. (2).

The following are the sections in the Bills of Exchange Act, 1882, which summarise the present law as to crossed cheques:—

General and special crossings defined.

"**76.** (1.) Where a cheque bears across its face an addition of—

"(*a*.) The words 'and company,' or any abbreviation thereof, between two parallel transverse lines, either with or without the words 'not negotiable;' or

"(*b*.) Two parallel transverse lines simply, either with or without th ewords 'not negotiable;' that addition constitutes a crossing, and the cheque is crossed generally.

"(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is crossed specially, and to that banker.(*e*)

Crossing by drawer or after issue.

"**77.** (1.) A cheque may be crossed generally or specially by the drawer.

"(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

"(3.) Where a cheque is crossed generally, the holder may cross it specially.

"(4.) Where a cheque is crossed generally or specially, the holder may add the words 'not negotiable.'

(*e*) A cheque drawn in favour of C., and crossed with the words, "Account of C., National Bank, Dublin," is not thereby rendered non-transferable: *National Bank* v. *Silke* [1891], 1 Q. B. 435.

"(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.(*a*)

"(6.) Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.(*b*)

Crossing a material part of cheque.

"**78.** A crossing authorised by this Act is a material part of the cheque. It shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.(*c*)

Duties of banker as to crossed cheques.

"**79.** (1.) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, being a banker, the banker on whom it is drawn shall refuse payment thereof.

"(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection, being a banker, he is liable to the true owner(*d*) of the cheque for any loss he may sustain owing to the cheque having been so paid. Provided that where a cheque is presented for payment, which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this act, the banker paying the cheque, in good faith and without negligence, shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been

(*a*) The second crossing is a material part of the cheque. See section 78.

(*b*) There was no corresponding section in the Act of 1876.

(*c*) It is to be noticed that there are no direct words in this section forbidding the *cancellation* of a crossing. The drawer, it is submitted, may cancel the crossing by writing "pay cash."

(*d*) If such cheque bears the words "not negotiable" the true owner will be, by virtue of section 81, the last lawful holder before a defect in title has accrued; if it does not bear these words, any holder, in due course notwithstanding that defect in title, is the true owner.

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added to or altered otherwise than as authorised by this act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker, as the case may be.(*e*)

"**80.** Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights, and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection of banker and drawer where cheque is crossed.

"**81.** Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.(*f*)

Effect on holder of crossing cheque "not negotiable."

"**82.** Where a banker in good faith and without negligence(*g*) receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title, or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

Protection to collecting banker.

The collecting banker, it would seem, is not protected by section 82 if he deals with the cheque or its proceeds in any way amounting to conversion, for it has been held

(*e*) The obliteration, &c., of a crossed cheque with a felonious intent is made a felony by 24 & 25 Vict. c. 98, s. 25. See note (*a*), p. 68, *ante*.

(*f*) If a cheque marked "not negotiable" be drawn in favour of a firm, and one of the partners in fraud of his co-partners indorses the cheque over to a third person, the other partner may recover from such indorsee. ***Fisher* v. *Roberts*** [1890], Times L. R. 354; see also *National Bank* v. ***Silke*** [1891], 1 Q. B. 435.

(*g*) As to what may amount to negligence under this section, see *Bissell* v. ***Fox***, 53 L. T. (N.S.) 193.

that the section only protects him when dealing with the cheque in the only way which as a matter of business he can deal with it, namely, by crediting his customer with the amount, in which case he is not liable.(*a*)

As to what may amount to conversion it is very difficult to say, but in a recent case it has been held that the payment of the proceeds of the cheque by the banker to a person who had no account with the banker amounted to conversion so as to deprive the banker of the protection of the statute.(*b*) Where the only transaction between an individual and a banker is the collection of a crossed cheque, such individual is not a customer of the bank within the section.(*c*) Notwithstanding the decision in *Mathieson* v. *London and County Bank*, it is submitted that section 82 protects a banker, whether the cheque is or is not crossed "not negotiable."

It will thus be seen that the law as to crossed cheques has been but slightly altered by the Bills of Exchange Act, 1882, the most important being the power of the collecting banker to cross specially to himself the cheques received for collection.

Section 82, it will be observed, expressly renders protection to a banker collecting a cheque for a customer having *no* title as well as for one who has a defective title.

(*a*) *Arnold* v. *Cheque Bank*, 1 C. P. D. 578.

(*b*) *Kleinwort and Company* v. *Comptoir National D'Escompte de Paris* [1894], 2 Q. B. 157. See also *Mathieson* v. *London and County Bank*, 5 C. P. D. 7; *Fine Arts Society* v. *Union Bank of London*, 17 Q. B. D. 705.

(*c*) *Mathews* v. *Williams, Brown and Company*, 10 R. 210; 63 L. J. Q. B. 494.

CHAPTER VII.

CASHED CHEQUES.

LET us consider what is the proper mode of disposing of a cheque after it has been cashed, and whether it is the banker or the drawer who is entitled to its possession? We have seen that when a cheque is dishonoured, it is returned, with the technical phrase, "no effects," or words to that effect, written upon it. When the banker hands back the cheque to the drawer, after it has been cashed by the banker, this restoration is not known as a return of the cheque. In fact, however, such restoration nearly always takes place; the banker's duty, in the absence of any agreement with his customer to the contrary, being to return the cheque after cashing it. Except where there is such an agreement, a banker has no more right to a cheque which he has honoured, than the payee of a bill of exchange has to the bill when paid. It is always considered that the cheque when paid(*d*) is the property of the drawer and in his possession; the banker, *for this purpose*, being his agent, and the possession of the banker his possession;(*e*) and, therefore, where the drawer is one of the parties to an action, a notice to produce is all that is necessary to get the paid cheque before the Court.(*f*)

This is the rule with respect to all cheques drawn in the usual mode. But in some cases bankers require their customers before opening an account to consent to their cheques being retained by the bank, and there may also be instances where a cheque is drawn with the intention that it should remain in the banker's hands, after he has paid

(*d*) Per WILDE, C.J., in *Reg.* v. *Watts*, 2 Den. C. C. 21.
(*e*) *Partridge* v. *Coates*, R. & M. 156.
(*f*) *Burton* v. *Payne*, 2 C. & P. 520.

out the amount of it, as a kind of security for repayment, on which he may be able, if necessary, to proceed against the customer.(*a*)

The reason of the above rule is immediately seen when we consider that the cheque, bearing the tokens of having been cashed by the bankers, affords evidence, when produced, that the money for which it is drawn has been paid, according to the requirement of the drawer, by the drawees; it is, therefore, the drawer's proof, or voucher, of the payment of the debt due to the payee of the cheque. When the drawer draws on his own account, against his own moneys deposited with the bankers, the cheque in its cancelled state is his evidence against the payee that the debt has been discharged. When the drawer draws on a fund in the banker's, upon which he is specially empowered, in respect of some office or situation which he holds, to draw, it is his voucher, as against his constituents to whom the fund belongs, that their debt to the payee has been duly discharged. In either case equally, the cheque, or the piece of paper, is the property of the drawer.(*b*)

Where a drawer of a cheque, after it had been paid and returned to him cancelled by his bankers, darkened the signature so as to give it the appearance of a forgery; and then took it to his bankers and represented it to them as the forgery of another person: it was held, that the alteration of his own cheque by the drawer, although a cheat on his bankers, was not a forgery.(*c*)

(*a*) See *Other* v. *Ireson*, 24 L. J. Ch. 654.
(*b*) *Charles* v. *Blackwell*, 2 C. P. D. 162; *Reg.* v. *Watts*, 2 Den. C. C. 14, 22.
(*c*) *Brittain* v. *Bank of London*, 3 F. & F. 465; 11 W. R. 569.

CHAPTER VIII.

CHEQUES AS EVIDENCE OF A DEBT OR OF PAYMENT, ETC.

It is obvious that the mere fact of money having passed from A. to B. does not of itself imply that A. has lent that amount to B., for it is equally consistent with it having been a gift by A. to B., or with it having been a payment made by A. on account of a pre-exising debt, due from him to B. For the same reason, it is clear that the mere fact of a cheque having been drawn by A., payable to B., although subsequently cashed and paid to B., is no evidence of money lent by the drawer to the payee.(*d*) Nor does the fact that the cheque bears the payee's endorsement make any difference; for that only goes to show that the money has passed through his hands and the object for which the cheque was given still remains undetermined.

Again a cheque that has never been presented has been held to be no evidence of a loan by the drawer to the payee.(*e*)

As between banker and customer a cheque that has been cancelled by the banker is *primâ facie* evidence of his having repaid so much of the moneys deposited with him, but it is no evidence that that amount has been lent by him to the customer.(*f*)

Further, the mere fact that a cheque has been drawn by the drawer in favour of his creditor and paid by the banker does not of itself suffice to amount to evidence of payment of the debt;(*g*) before it can amount to such evidence it

(*d*) *Pearce* v. *Davis*, 1 Mood. & Rob. 365; *Welsh* v. *Pearson*, 1 Stark. 474; *Carmarthen Railway* v. *Manchester Railway Company*, L. R. 8 C. P. 684; *Thompson* v. *Pitman*, 1 F. & F. 339.

(*e*) *Pearce* v. *Davis*, *supra*; *Mountford* v. *Harper*, 16 M. & W. 825.

(*f*) *Fletcher* v. *Manning*, 12 M. & W. 571.

(*g*) *Egg* v. *Burnet*, 3 Esp. 196; *Lloyds* v. *Sandilands*, Gow. 15; *Pearce* v. *Davis*, *supra*.

must be shown that it has passed through the creditor's hands,(*a*) and hence the advisability, when paying a debt by cheque, to make it payable to the order of the creditor, so as to secure his indorsement to it.

It has, however, been held that in order to prove a payment to the payee on the drawer's *behalf*, it is enough to put in evidence a cheque shown to have been in circulation.(*b*)

But it is not to be concluded that the drawing of a cheque in favour of a creditor by the debtor, and the delivery of it to the former, operate *per se* as payment, for a cheque is not money,(*c*) nor is it a legal tender; the creditor may always object to it as payment,(*d*) and if he has done so, when it was delivered to him, he may sue for the original debt, although he retains the cheque.(*e*) But it is otherwise in the case of payment by a draft on the debtor's banker, accepted by the banker and payable after so many days' sight; in this case the creditor, not having returned the draft to the debtor, cannot sue before the expiration of the period, because the assets of the debtor in the hands of the banker are bound to the extent of the draft, which sum the debtor cannot withdraw.(*f*)

Cheques as Evidence of notification of change in Drawee Firm.—Many bankers are in the habit of supplying their customers with printed forms, in blank of cheques, which is convenient for their customers, as saving time and trouble, and useful for both parties, as increasing the difficulty of forging or altering cheques. It is also not unusual, upon a change in the firm of a banking house which adopts this practice, to alter the printed form of

(*a*) *Aubert* v. *Walsh*, 4 Taunt. 293; *Mountford* v. *Harper*, *ante*.
(*b*) *Thompson* v. *Pitman*, 1 F. & F. 339.
(*c*) *Moore* v *Barthrup*, 1 B. & C. 5.
(*d*) And even when the creditor accepts a cheque as payment, such payment does not put an end to the debt until the cheque is cashed: it only suspends the creditor's remedy, and if the cheque is not paid the debt revives *ab initio*. *Owen* v. *Hale*, 3 Q. B. D. 371; 47 L. J. Q. B. 496.
(*e*) *Hough* v. *May*, 4 A. & E. 954.
(*f*) *Stuart* v. *Cawse*, 28 L. J. C. P. 193; 5 C. B. (N.S.) 737.

the cheques accordingly, and to supply to its customers the altered form, in order that it may be used by them for the future, instead of the old one. Such alteration in the name and style of the firm, when made in the printed form supplied, has been held to constitute a sufficient notification of the change to a customer to whom the altered form has been delivered, and who has used it in drawing cheques.(g)

Statute of Limitations.—It is difficult in the present state of the authorities to say when the statutory period of six years begins to run in the case of cheques. It is submitted that it does not commence to operate in favour of the drawer and against the holder, until it has been presented and dishonoured; except in those cases where presentment is, under the Bills of Exchange Act, 1882, dispensed with, in which cases it would seem that the time ought to run from the date when the holder was, under section 47, entitled to treat the bill as dishonoured.(h)

When a bill of exchange or promissory note has been

(g) The Bank of England requires its customers to use the engraved forms of cheques, which it supplies, and refuses to pay their cheques drawn otherwise. See 6 C. & P. 730.

(h) The following note is taken from "Byles on Bills," 15th edit., p. 357: "It was formerly thought that all parties alike to an instrument payable on demand, drawer or endorser as well as acceptor and maker, were liable thereon, as of the date; but the tendency of modern cases seems to apply a different rule to drawers and endorsers. In *Ex parte Boyse*, 33 Ch. D. 612; 56 L. J. 135, it was held that the statute on a bill at sight did not begin to run in favour of the drawer till presentment. And in the case of a cheque, when a letter notifying countermand of payment had been sent (presentment being therefore excused), the statute was held to run in favour of the drawer from the receipt of that letter. *Ex parte Bethell*, 34 Ch. D. 561; 56 L. T. 334. In America the Supreme Court laid down absolutely, in *Bull* v. *Bank of Kasson*, 123 Supreme Court, 16 Davis, that the statute ran in favour of the drawer from the demand. If this be so, the holder of a cheque may, it would seem, present any time within six years to preserve his rights against the drawer, and then have six years more within which to bring his action." In *In re Boyse*, NORTH, J., said: "The liability of the drawer of a bill to pay it, if the acceptor does not, and the liability on the part of the drawer does not arise, and there could be no action against the drawer until what was necessary against the acceptor had been done—that is to say, you could not sue the drawer for non-payment until the bill had been presented for payment. That presentation for payment did not take place until February, 1880 (bill given in 1872), and it appears to me that if the statute applies at all it would only run from that date, because there was no liability on the part of the drawer until that time."

given, in part payment of a debt, under such circumstances as to raise the implication of a promise to pay the balance, the defence of the Statute of Limitations is answered, as from the time of the delivery of the negotiable security, whatever afterwards becomes of it.(*a*). The question in the case deciding this point was, whether a bill of exchange, drawn by the creditor and accepted by the debtor in part payment of an antecedent debt, was sufficient to take the case out of the statute, and the Court determined that it was, and upon principles and reasoning which seem to apply equally to part payment by a cheque.

The plaintiff having agreed to lend the defendant a sum of money gave him a cheque for the amount, which the defendant paid into his own bankers, receiving credit for the amount. The cheque was not paid by the plaintiff's bankers till some days afterwards. The plaintiff brought an action for money lent, and it was held, that the Statute of Limitations only ran from the time of the payment of the cheque by his bankers.(*b*)

(*a*) *Turney* v. *Dodwell*, 23 L. J. Q. B. 137; 3 El. & Bl. 136; *Irving* v. *Veitch*, 3 M. & W. 90. It has been held that part payment on account of a debt will not prevent the operation of the statute unless made to the creditor or his agent. *Stamford and Spalding Banking Company* v. *Smith*, 61 L. J. Q. B. 405.

(*b*) *Garden* v. *Bruce*, L. R. 3 C. P. 300; 37 L. J. C. P. 112.

CHAPTER IX.

CHEQUES CONSIDERED AS MONEY.

By the usage of trade cheques have been, in some cases, considered as money. For instance, by the usage of banking, if a bill was sent up to a London banker from a country correspondent, to be presented for payment, the London banker was thought to be justified in receiving a cheque in payment for it, though the cheque should be dishonoured after he has given up the bill; (c) but it may be doubted whether this usage would be considered, at the present day, to be a reasonable usage so as to protect the London banker.

Another case in which a cheque has been regarded as payment is the following:—A cheque given for stock sold was lost by the vendor in going home; the purchaser was immediately apprised of the loss, but refused to pay the price of the stock without an indemnity. Four months after this the bankers on whom the cheque was drawn failed, with sufficient money of the drawer's in their hands to cover it. Held that, under these circumstances, an action would not lie by the vendor for the price. (d)

Cheques belonging to a person, against whose effects a writ of *fieri facias* may have been sued out of any superior or inferior Court, may now, and must, be seized by the sheriff, by virtue of the 1 & 2 Vict. c. 110, s. 12, but the statute makes a distinction between cheques, and money or bank notes (both of which it empowers and orders the sheriff to seize), in this way: It directs that money and bank notes shall be given up to the judgment creditor, but the sheriff is to hold cheques as a security for the sum

(c) *Russell* v. *Hankey*, 6 T. R. 12; *Ridley* v. *Blackett*, Peake Add. Cas. 62. As to lost cheques, see *post*, p. 88.
(d) *Bevan* v. *Hill*, 2 Camp. 381.

directed by the writ to be levied, and is enabled to sue upon them, and the payment by the party liable on such cheque, with or without suit, or the recovery and levying execution against the party so liable, is to discharge such party from his liability on the cheque, and then the sheriff is to pay over the money so recovered to the judgment creditor: provided that no sheriff shall be bound to sue any party upon such cheque, unless the judgment creditor shall enter into a bond with two sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of the action.

A judgment creditor, finding that a sum of money was about to be paid out, in a cause in Chancery, to his debtor, applied to the Court to order that the sheriff might be at liberty to seize, in the hands of the Accountant-General in Chancery, a cheque by means of which the sum was to be paid out. It was held that the cheque was liable, by virtue of the above statute, to seizure; it was also held that, inasmuch as the cheque was in the hands of the Accountant-General of the Court, the application was proper;(a) that is, that it would not have been proper for the sheriff to seize without being authorised by an order of the Court.

In another case, subsequent to this, it was said that a cheque of the Accountant-General, in favour of A., but not delivered out, is not A.'s property, so as to be liable to seizure; and leave to seize was refused, the case being, it was said, distinguishable from the last-mentioned case, by the circumstance that the cheque had been delivered out by the Accountant-General in the former case, which was not so in the latter. A stop order was accordingly granted restraining the Accountant-General from parting with the cheque out of his possession.(b) It may be observed, with respect to the distinction taken between the two cases, that, in the first case, the cheque had been delivered out, but had been replaced in the Accountant-General's hands,

(a) *Watts* v. *Jeffries*, 3 Mac. & G. 422.
(b) *Courtoy* v. *Vincent*, 15 Beav. 486.

so that the property in it having passed to the debtor, the Accountant-General held it as agent for the debtor, and, the possession of the agent being the possession of the principal, it might be seized in the hands of the one, on the same grounds that it might be seized in the hands of the other.

A cheque may have been treated throughout a transaction as money by all the parties, in which case no one of them can turn round and insist upon any right that he might have derived out of the cheque, considered as an order for the payment of money. Thus, it was held that where a cheque had been deposited with a person to abide a certain event, it was no breach of the stakeholder's duty to get the cheque cashed before the occurrence of the event.(c)

Where a person fraudulently gives a cheque, which he has no reasonable ground to expect will be honoured, in payment for goods, such cheque will not be considered as money, and the creditor may sue for the price or disaffirm the contract and sue in *trover* for the goods.(d)

It has been held in Ireland that on the sale of goods for ready money, if the purchaser gives in payment his cheque which he then knows he has not funds in the bank to meet, this amounts to a false representation of a material fact, which vitiates the sale and entitles the seller to rescind the contract, even though the purchaser at the time believed, and had reasonable grounds for believing, that the cheque would be paid.(e)

When a cheque is handed to a person, on a condition which the drawer finds is to be broken or eluded, he has a right to stop the payment of the cheque.(f) A house

(c) *Wilkinson* v. *Godefroy*, 9 A. & E. 536.

(d) *Hawse* v. *Crowe*, R. & M. 414 ; *Noble* v. *Adams*, 7 Taunt. 59 ; *Earl of Bristol* v. *Wilsmore*, 1 B. & C. 514 ; and as to the effect of a re-sale by the buyer, see *Bentley* v. *Vilmont*, 12 App. Cas. 471, and Sale of Goods Act, 1893.

(e) *Loughnan* v. *Barry*, 6 Ir. R. C. L. 457 ; but see *Hawes* v. *Crowe*, *supra*.

(f) *Wienholt* v. *Spitta*, 3 Camp. 376 ; see *Spincer* v. *Spincer*, 2 M.& G. 295.

in Westphalia having received a sum of money on account of the plaintiff, directed the defendants, who were their correspondents in London, to pay it to him, but said they could not allow him interest upon it, as they had made none themselves. This being communicated to the plaintiff, he at first insisted on interest; but finally agreed, on having a cheque for the principal, to give a receipt in full. He accordingly wrote such receipt, and received a cheque for 532*l.* in exchange. Having got it into his hands, he said he should prosecute the house abroad for interest before the Chamber of Commerce in Paris. The defendants thereupon ordered payment of the cheque to be stopped. Lord ELLENBOROUGH said: "If I give a draft upon a condition, and I find the condition is to be eluded, I may stop the payment. This was a conditional delivery of the draft when it was delivered, all still remained *in fieri*. The defendants, on discovering the plaintiff's intentions, were fully justified in resisting the demand. The draft in his hands had become a piece of waste paper."(*a*) But if A., by means of a false pretence or a promise, or a condition which he does not fulfil, procures B. to give him a cheque in favour of C., to whom he pays it, and who receives it *bonâ fide* for value, B. remains liable on it, and, if cashed by C., he cannot recover the money from him.(*b*)

A banker has no right to debit the customer who draws a cheque from the date at which it is drawn; he is bound to make the entry as of the date when the cheque was cashed.(*c*)

(*a*) See note (*f*), *ante*, p. 81.
(*b*) *Watson* v. *Russell*, 3 B. & S. 34; 31 L. J. Q. B. 304. See also *Misa* v. *Currie*, L. R. 1 App. Cas. 554; 45 L. J. Q. B. 852; 24 W. R. 450.
(*c*) *Goodbody* v. *Foster*, cited in "Byles on Bills" (15th edit.), 26. And as to the rights of a holder in due course of a cheque, see Bills of Exchange Act, ss. 29, 30.

CHAPTER X.

CHEQUES ANALOGOUS TO BILLS OF EXCHANGE PAYABLE ON DEMAND.

By the Bills of Exchange Act, 1882, s. 73, a cheque is defined as a bill of exchange drawn on a banker payable on demand, and, except as otherwise provided in Part III. of the Act, the provisions of the Act applicable to a bill of exchange payable on demand apply to a cheque.(*d*)

How a Cheque differs from a Bill Payable on Demand.—(*a.*) Cheques are not intended to be, and are not, in fact, accepted by the banker upon whom they are drawn, and, consequently, no action will lie against him thereon by the holder ;(*e*) but, subject to the provisions of the Bank Charter Acts,(*f*) a banker may, it seems, accept a cheque if he is so disposed,(*g*) provided he does so in the manner required by the Bills of Exchange Act, 1882.(*h*)

(*b.*) A cheque is intended for early, if not for prompt, payment, while a note or bill payable on demand is considered a continuing security.(*i*)

(*c.*) As has already been stated, the drawer is not discharged by the holder failing to present the cheque for payment within a reasonable time, unless the drawer has been actually prejudiced by the delay.(*k*)

(*d*) By section 10 a bill is payable on demand when it is expressed to be payable on demand, or at sight, or on presentation, or in which no time for payment is expressed ; and by section 2 the expression "banker" includes a body of persons, whether incorporated or not, who carry on the business of banking. An authority to draw cheques does not necessarily include an authority to draw bills : *Forster* v. *Mackreth*, L. R. 2 Ex. 163. As to the stamping of cheques, see *ante*.

(*e*) See *ante*.

(*f*) See "Byles on Bills" (15th edit.), p. 79 ; "Chalmers on Bills of Exchange Act," p. 246.

(*g*) *Keene* v. *Beard*, 8 C. B. (N.S.) 372, 380.

(*h*) Section 17 (2).

(*i*) *London and County Banking Company* v. *Groome*, 8 Q. B. D. 288, 293. See *ante*.

(*k*) See *ante*, p. 52.

(*d.*) A cheque must be drawn on a banker.

(*e.*) It is usually, though not necessarily, only inland.(*a*)

(*f.*) A banker who pays a cheque drawn on him to order on demand having a forged or unauthorised endorsement is, nevertheless, protected.(*b*)

(*g.*) The duty and authority of the drawee of a cheque is determined by the drawer's countermand of payment or by notice of the drawer's death.(*c*)

(*a*) And even though drawn abroad may be treated as inland unless that fact appears on their face. Should it do so they are nevertheless valid (section 72 (1) (*b*)); but see foreign bills requiring protesting in the event of dishonour (section 51 (2), and "Byles on Bills," 15th edit., p. 16).

(*b*) See *ante*, p. 49.

(*c*) Bills of Exchange Act, 1882, s. 75. And as to the difference between cheques and bills of exchange generally, see further *Keene* v. *Beard*, *supra*; *Warwick* v. *Rogers*, 5 M. & G. 340; *Serle* v. *Norton*, 2 M. & Rob. 404; *Boehm* v. *Sterling*, 7 T. R. 430; *Alexander* v. *Burchfield*, 7 M. & G. 1067.

CHAPTER XI.

THE RIGHTS AND POWERS OF THE HOLDER OF A CHEQUE.

BY section 38 of the Bills of Exchange Act, 1882, the rights and powers of the holder(*d*) of a bill, in which term a cheque is by section 73 included, are as follows:—

(1.) He may sue on the bill in his own name.

(2.) Where he is a holder in due course,(*e*) he holds the bill free from any defect of title(*f*) of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.(*f*)

(3.) Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and if he obtains payment of the bill, the person who pays him in due course gets a valid discharge of the bill.(*g*)

But although the holder of a cheque is entitled on its dishonour to sue the drawer and any of the indorsers, he has not, as has been stated previously, any right of action against the bankers for their refusal to honour it.(*h*)

(*d*) See definition of holder (section 2).

(*e*) As to who is a holder in due course, see section 29.

(*f*) As to defective title, see section 29. It is necessary to distinguish between a defective title and no title, for a person who claims under a forgery neither has, nor can give, a title. See section 24.

(*g*) It must be remembered that when a person takes a crossed cheque which bears on it the words "not negotiable," he neither has, nor is capable of giving, a better title to the cheque than that which the person from whom he took it had. See section 81.

(*h*) See *ante*, p. 5.

CHAPTER XII.

GIFTS OF CHEQUES.

Gifts *inter vivos.*

A CHEQUE drawn by A., in favour of B., as a gift, cannot, according to the general principle that there must be a consideration for an undertaking not under seal, be enforced by B. in an action against A.(*a*)

But where C. voluntarily gave a cheque on his bankers to B., and B. forthwith presented it, but payment was refused by the banker, although they had funds of C. sufficient for the purpose; and on the next day, and before the cheque had been cashed, C. died, it was held, that as everything had been done in their power both by the donor and the donee of the cheque to make the gift complete, and the failure had arisen solely from the acts of third parties, the gift was an effectual gift *inter vivos*, and B. was entitled to be paid out of the assets in the hands of C.'s executors.(*b*)

Donatio mortis causâ.

A gift of a cheque by the drawer thereof, made in contemplation of death, will not operate as a good *donatio mortis causâ*, because the death of the drawer is a revocation of the banker's authority to pay, and the donee cannot after the drawer's death claim to be paid out of his estate, should the bankers refuse payment.(*c*) It may be, how-

(*a*) *Easton* v. *Pratchett*, 1 C. M. & R. 808, where Lord ABINGER, C.B., says: "If a man gives money as a gratuity, it cannot be recovered back, because the act is complete; yet a man who promises to give money cannot be sued on such promise; and if so, I do not see how a promise in writing, not under seal, can have any binding effect." See *Hill* v. *Wilson*, 21 W. R. 757.

(*b*) *Bromley* v. *Brunton*, L. R. 6 Eq. 275; 37 L. J. Ch. 902.

(*c*) *Hewitt* v. *Kaye*, L. R. 6 Eq. 198; *Beak* v. *Beak*, L. R. 13 Eq. 489. A distinction was formerly made between a cheque drawn payable to bearer and a cheque drawn payable to order, the latter being held capable of being the subject-matter of a *donatio mortis causâ* (*Rolls* v. *Pearce*, 5 Ch. D. 730; *In re Mead*, 15 Ch. D. 651); but it is submitted that this distinction no longer exists. See section 75 of the Bills of Exchange Act, 1882, and "Byles on Bills," 15th edit., 201.

ever, that should the banker, in ignorance of the drawer's death, pay a cheque so given, the donee would be entitled to retain the proceeds as against the drawer's representatives.(*d*) And should the donee negotiate the cheque for value, the person who takes it would be entitled to claim against the estate of the drawer.(*e*) On the other hand, it has been held that a cheque payable to the donor or order and, without having been indorsed by him, given by the donor during his last illness to his son, stands on the same footing as a promissory note or bill of exchange payable to the donor or order, and will pass to the son by way of a *donatio mortis causâ*.(*f*)

(*d*) See *Tate* v. *Hilbert*, 2 Ves. Jur., at p. 118.
(*e*) *Rolls* v. *Pearce*, 5 Ch. D. 730.
(*f*) *Clement* v. *Cheeseman*, 27 Ch. D. 631; *Veal* v. *Veal*, 27 Beav. 303.

CHAPTER XIII.

PAYMENT OF LOST OR DESTROYED CHEQUES AND BILLS.

At common law no action could be maintained on a lost cheque, note, or bill, if negotiable; nor on the consideration for it,(*a*) though it seems such action lay where the instrument had been destroyed.(*b*)

Now, by section 69 of the Bills of Exchange Act, 1882 it is enacted:—

"Where a bill," in which expression a cheque is, by section 73, included, "has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again."

"If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so."

And by section 70, "in any action or proceeding upon a bill the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question."

Notice of dishonour is not excused by the fact that the bill or cheque has been lost or destroyed.

A plaintiff failing to give or to offer an indemnity may be compelled to pay the costs of the defendant incurred up to the time of his doing so.(*c*)

(*a*) *Pierson* v. *Hutchinson*, 2 Camp. 211; *Wain* v. *Baily*, 10 Ad. & E. 616; *Crowe* v. *Clay*, 9 Ex. 604.

(*b*) *Wright* v. *Maidstone*, 24 L. J. Ch. 623.

(*c*) *King* v. *Zimmerman*, L. R. 6 C. P. 466.

CHAPTER XIV.

CRIMINAL OFFENCES IN RELATION TO CHEQUES.

Cheating by means of cheques.

For a person to give what purports to be his cheque upon his banker, in payment for goods, when in truth he has no account with the banker named, is a false pretence within the 24 & 25 Vict. c. 96, s. 88.(*d*) Where a prisoner was charged with falsely pretending that a *post* dated cheque, drawn by himself, was a good and genuine order for 25*l.*, whereby he obtained a watch and chain, and the jury found that before the completion of the transaction—of the sale and delivery of the watch and chain, by the prosecutor, to the prisoner—he represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque, though he postponed the date for his own convenience, which was all false, and that he represented that the cheque would be paid on or after the day of the date, but he had in reality no funds to pay it, the prisoner was held to be properly convicted.(*e*)

But if the person, at the time he gave the cheque believed, although he had no account with the bankers, that the cheque would be paid on presentation, he cannot be found guilty of a false pretence. So where the defendant, on the purchase of a mare by him, gave a cheque drawn on a banker with whom he had no account, but told the vendor to postpone presenting it till a given day, and the vendor assented, but nevertheless presented it before that time, when it was dishonoured, the defendant was held to be entitled to be acquitted, on it appearing that he was daily expecting to have money paid to him which would

(*d*) *Rex* v. *Jackson*, 3 Camp. 370.
(*e*) *Rex* v. *Parker*, 2 Mood. C. C. 1; 7 C. & P. 825; see also *Reg.* v. *Walne*, 23 L. T. 748.

have enabled him to place the bank in funds to meet the cheque by the time named by him.(*a*)

It is no false pretence, as regards the banker, to draw on and present to him a cheque for a larger amount than you have in his hands.(*b*) A. drew a bill on B., on whom he had no right to draw, in order to induce bankers to honour his cheque, which they did; and it was held not to be a false pretence, because A. only obtained credit, and not any specific sum on the bill.(*c*) But to give a cheque by way of payment for an amount which exceeds the assets available to meet it, with the knowledge that there is no authority to overdraw, and that it will be dishonoured on presentation, renders the drawer liable to a conviction for false pretences.(*d*) A cashier of a bank has a general authority to part with the bank's money in payment of such cheques as he may think genuine, and, therefore, when money has been obtained from a cashier at the bank on a forged cheque knowingly, it does not amount to larceny, but to obtaining the money by false pretences.(*e*)

Stealing. Formerly, the stealing of a cheque, *quâ* cheque, did not amount to larceny, but now, by 24 & 25 Vict. c. 96, s. 27, it is made so.(*f*)

Forging. A person may be indicted for forging a cheque as "an order for the payment of money" under 24 & 25 Vict. c. 98, s. 39.(*g*) If the charge in the indictment is for forging a warrant and order, proof of a document which is a warrant but not an order for the payment of money, will not support the indictment.(*h*)

(*a*) *Reg.* v. *Walne*, 11 Cox, 647.
(*b*) Per MAULE, J., in *Reg.* v. *Garrett*, 23 L. J. M. C. 22.
(*c*) *Rex* v. *Wavell*, 1 Mood. C. C. 224; see 11 Cox C. C., App. xi., for precedents of counts in an indictment for presenting a false cheque.
(*d*) *Reg.* v. *Hazelton*, L. R. 2 C. C. 134; 44 L. J. M. C. 11.
(*e*) *Reg.* v. *Prince*, 38 L. J. M. C. 8; L. R. 1 C. C. R. 150.
(*f*) *Rex* v. *Walsh*, R. & R. 215; *Reg.* v. *Essex*, 1 D. & B. C. C. 371; 27 L. J. M. C. 20.
(*g*) *R.* v. *Willoughby*, 2 East, P. C. 944.
(*h*) *Reg.* v. *Williams*, 2 C. & K. 51. Filling in a form of cheque already signed, with blanks left in it for the sum, is forgery: *Flower* v. *Shaw*, 2

A cheque of a railway company, signed by the secretary, addressed to their bankers, directed the latter to pay to A. a shareholder, or his order, the sum therein mentioned. There was a memorandum at the bottom of the document, "The shareholder's name must be indorsed at the back of the cheque:" it was held, that a person who forged the shareholder's indorsement on the cheque was guilty of forging an order or a warrant for the payment of money.(*i*)

Forging and uttering an indorsement on a cheque, with a view to get it cashed by the credit of the name, will sustain an indictment for forgery.(*k*)

A cheque, although *post* dated, is an order for the payment of money.(*l*)

Where an instrument is, by reason of its incompleteness, not operative, an indictment for forging, or feloniously uttering, an indorsement on it will not lie. *Semble*, however, the facts would support an indictment for forgery at common law.(*m*)

A cheque drawn by a person in a fictitious name amounts to a forgery under the Act, unless the cheque was drawn and uttered *as his own*, and it was so received by the payee, in which case his subscribing a fictitious name will not make it a forgery, the credit being there given wholly to himself without any regard to the name or any relation to a third party. Thus, the prisoner Robert Martin, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque in the name of William Martin in the presence of the prosecutor upon a bank at which he, the prisoner, had no account, and gave it to the prosecutor as his own cheque drawn in his own name. At the time he drew the cheque, the prisoner knew that it would be, as in fact it was, dishonoured. The prosecutor who knew

C. & K. 703. So, filling in a blank cheque with a larger sum than that authorised by the drawer, is a forgery; *Reg.* v. *Wilson*, 17 L. J. M. C. 82.

(*i*) *Reg.* v. *Autey*, 1 D. & B. C. C. 294; 26 L. J. M. C. 190.

(*k*) *Reg.* v. *Wardell*, 3 F. & F. 82.

(*l*) *Reg.* v. *Taylor*, 1 C. & K. 213.

(*m*) *Reg.* v. *Harper*, 7 Q. B. D. 78; *Reg.* v. *Turpin*, 2 C. & K. 820.

the prisoner and his real name received the cheque in the belief that it was drawn in the prisoner's own name :—Held, that the prisoner was not guilty of the offence of forgery.(*a*)

A forged draft on a banker in the name of a person who never kept cash with the banker is a warrant or order within the Act.(*b*) So is a forged draft in the name of a person who does keep cash with the banker, whatever may be the state of his account at that particular time.(*c*)

On an indictment for uttering a forged cheque, it is not necessary to call the supposed maker to disprove an authority from him to any other person to sign in his name ; it is sufficient to disprove the handwriting.(*d*)

A cheque purported to be drawn by G. A. upon bankers; evidence that no person named G. A. kept an account with or had any right to draw on the bankers was held *primâ facie* sufficient proof that G. A. was a fictitious person.(*e*)

To alter a cheque, which is crossed with the name of a banker, with intent to defraud, is a forgery.(*f*)

Unstamped cheques admissible in evidence.

In criminal proceedings, a cheque, although it may not be duly stamped, is admissible in evidence, by virtue of the exception contained in section 14 (4) of the Stamp Act, 1891.

(*a*) *Reg.* v. *Martin*, 5 Q. B. D. 34 ; see also *Dunn's Case*, 1 Lea. C. C. 59.
(*b*) *R.* v. *Lockett*, 2 East, P. C. 940.
(*c*) *R.* v. *Carter*, 1 Den. C. C. 65.
(*d*) *Reg.* v. *Harley*, 2 M. & Rob. 473.
(*e*) *Rex* v. *Backler*, 5 C. & P. 118. See also *R.* v. *Bramen*, 6 C. P. 326.
(*f*) *Ante*, p. 68.

CHAPTER XV.

LETTERS OF CREDIT AND CIRCULAR NOTES.

A LETTER of credit is an instrument, in common use among bankers, for the transmission of money either within the United Kingdom or to the colonies, or to foreign countries.(*g*) It is not negotiable as a cheque, but is only an authority from the banker who signs it to the banker or other person to whom it is addressed, upon advice, to honour the drafts of the person named in it, and who produces the letter; and consequently he alone is entitled to draw the drafts or to receive payment. Letters of credit.

A letter of credit, saying "Please to honour the drafts of A. to the amount of 460*l*. and charge the same to the account of B.," is an authority to make the payment, but the possession of the document by the person to whom it is addressed does not prove that the payment has been made.(*h*) In order to show that the payment has been made there must be a draft by A. in pursuance of the direction and authority of the letter.(*h*)

As a letter of credit is not a negotiable instrument, if it is stolen, or lost, and the banker, upon whom the letter of credit is drawn, honours the drafts or pays the amount upon a forged signature, he is not thereby discharged; neither is the banker granting the letter of credit: for payment must be made in strict conformity with the letter.(*h*)

The statute 16 & 17 Vict. c. 59, s. 19, does not apply to letters of credit,(*i*) and it is submitted that the Bills of Exchange Act, 1882, s. 60, is equally inapplicable.

(*g*) "Story on Bills," sections 459—463 (4th edit).
(*h*) *Orr* v. *Union Bank of Scotland*, 1 Macq. H. L. Cas. 513; 2 C. L. R. 1566; *British Linen Company* v. *Caledonian Insurance Company*, 4 Macq. H. L. Cas. 107; 7 Jur. (N.S.) 587.
(*i*) *British Linen Company* v. *Caledonian Insurance Company*, 4 Macq. 107.

Issue by limited liability companies.

By the Companies Act, 1862, s. 41, a company having its liability limited, either by shares or by guarantee, shall have its name mentioned in legible characters on letters of credit, purporting to be signed by or on behalf of the company; and by section 42, if a director, manager, or officer of the company, or any person on its behalf, signs, or authorises to be signed, on behalf of the company, a letter of credit, wherein its name is not so mentioned, he shall be liable to a penalty of 50*l*., and shall further be personally liable to the holder of such letter of credit, for the amount thereof, unless the same is duly paid by the company.

If the drafts drawn by the owner of the letters are not honoured, he may recover from the grantor moneys paid by him in respect thereof, and the same rule applies where after payment of the drafts any surplus remains. It is his duty, however, first to restore the letters to the grantor.(*a*)

Marginal letters of credit.

With respect to marginal letters of credit, which are letters of credit written in the margin of blank bills of exchange,(*b*) they are described in the report of a case in which their real character and operation are defined,(*c*) and from which the following account is derived.

The course of dealing and practice relative to the issue and user of marginal letters of credit differs considerably in different parts of the mercantile world, and the terms of such issue and user depend upon the actual agreement

(*a*) *Conflans Quarry Company* v. *Parker*, L. R. 3 C. P. 1.

(*b*) The form of a marginal letter of credit is as follows:

No. 39.

Credit for £2,000 stg. in duplicate. 4907.

11,325

National Bank of Scotland, Edinburgh,

24th June, 1864.

To Messrs. Fletcher & Company, China.

I hereby, for the National Bank of Scotland, authorize you to draw the annexed Bill of Exchange at six months' sight for Two thousand pounds sterling on Messrs. Glyn & Co., Bankers, in London, who will honour the same in conformity with its tenor, if presented along with this Letter of Credit within one year from this date.

THOS. ANDERSON, Secretary.
JNO. J. SHEARER, P. Manager.

First of Exchange for £2,000 sterling.

No. $\frac{39}{4907}$ F.

Place and date of drawing, Shanghai, 5th April, 1865.

Six months after sight pay this first of Exchange (second of the same tenor and date not being accepted or paid), to our order, the sum of Two thousand pounds sterling, which charge to the National Bank of Scotland as per annexed Letter of Credit.

To Messrs. Glyn & Co.,
Bankers, London.

Drawer signs here,
FLETCHER & CO.

(*c*) *Maitland* v. *The Chartered Mercantile Bank of India, London and China*, 38 L. J. Ch. 363.

between the parties, and upon the terms apparent on the face of such marginal letters of credit. It is a common, but by no means an invariable, practice, that when such marginal letters of credit are granted by a bank in this country, in favour of a firm carrying on business abroad, the bank granting the letters of credit requires the security of some firm carrying on business in England for the repayment of any money which may be paid in respect of any draft drawn under such letter of credit; but if the credit of the foreign firm were good, such security would not in all cases be considered necessary; and, accordingly, whether such security is given or not depends on the credit and standing of the firm in whose favour such letters of credit are granted. The marginal letters of credit which are issued in this country, according to the usual practice, are sent to the foreign firm, not merely to enable it to raise funds for buying produce to be consigned to England, but as a guarantee to the purchasers of the bills of such foreign firm that such bills will on presentation be accepted, and also to give more complete facilities for raising money to the foreign firm in whose favour such marginal letters of credit are issued.(*d*)

Open credits and documentary credits.

Marginal letters of credit are usually either "open credits" or "documentary credits." "Open credits" are, on the face of them, engagements on the part of the person giving such credits to accept the drafts drawn under such credits unconditionally, except that generally there is a certain limit as to the time within which the credits are to be available; whereas, "documentary credits" are engagements to accept bills drawn under them subject to a condition or a proviso on the face of the credit that the drafts, when presented for acceptance, are to be accompanied by bills of lading or shipping documents.(*e*)

(*d*) *Ibid.*
(*e*) *In re Agra and Masterman's Bank, Ex parte Asiatic Company*, L. R. 2 Ch. 391; *Banner* v. *Johnston*, L. R. 5 H. L. Cas. 157; 40 L. J.

A *boná fide* holder of a bill of exchange, drawn under an open letter of credit (intended by the grantor to be shown to other persons or if his intention was not so in fact, if his conduct was such as to justify these persons in believing that he so intended), can maintain an action against the grantor of the letter of credit in case of his refusal to accept the bill. "The marginal note which is put upon the face of the bill of exchange," Vice-Chancellor JAMES said, "is intended to be a representation or a promise to any person who should become in due course the holder of that bill of exchange, that the bill would be duly honoured, and it would be clearly a contract with the owner, which would be a legal contract, the right of which would attach with the bill of exchange, and in that sense the contract is negotiable and assignable with the bill of exchange."(a)

So, where open letters of credit (intended to be used for showing to other persons) were granted to Fletcher and Company, a China firm, on the guaranty of Maitland and Company, an English firm, and Fletcher and Company, in fraud and violation of their agreement with Maitland and Company, drew bills under them not protected by shipping documents, and indorsed them for value to a bank who had no actual notice of the agreement between Fletcher and Company and Maitland and Company; Vice-Chancellor JAMES held, that the bank was entitled to require the grantors of the letters of credit to accept the bills, and that Maitland and Company had no equity to restrain them from procuring such acceptance.(a)

But as to the custom alleged that, according to the ordinary course of dealing in reference to letters of credit granted to foreign firms, the foreign firm could only obtain letters of credit upon the guaranty of some English firm,

Chanc. 730; *Chartered Bank of India, &c.*, v. *Macfadyen*, 64 L. J. Q. B. 367.

(a) *Maitland* v. *The Chartered Mercantile Bank of India, London, and China*, 38 L. J. Chanc. 363. See *Union Bank of Canada* v. *Cole*, 47 L. J. C. P. 100, *post*.

and that the foreign firm stipulated to use the letters of credit only for the purpose of buying goods to be consigned to England, and to transmit the bills of lading to the English firm as a security for the repayment of the bills of exchange drawn under the letters of credit by a mail not later than that which carried the bills of exchange; the Vice-Chancellor determined no such custom existed as Maitland and Company averred, and that even if there were such a custom, the rights of the bank as a *bonâ fide* holder for value could not be affected by the mere constructive notice of the agreement between Maitland and Company and Fletcher and Company which the custom would imply. "It is quite a novelty," the Vice-Chancellor observed, "to me to have it suggested that the negotiability of a negotiable instrument is to be affected by any private arrangement of that kind, which parties do not choose to put on the face of the document. That distinction seems to me to be actually expressed in the paragraph of the answer which draws a wide distinction between an open letter of credit and a documentary letter of credit. If it were intended to limit Fletcher and Company in the use of this letter of credit as between themselves and the world at large to a use for mercantile purposes connected with the purchase of goods, it would have been very easy to have expressed upon the face of the document that it was to be accepted if presented accompanied by bills of lading, or other documents representing mercantile transactions."(*b*)

But letters of credit, containing a promise to accept bills, create a contract between the giver of the letters and the person who advances money on the faith of them *only* when such letters are intended to be shown to the third persons for the purpose of obtaining advances; or where the giver of the letter has so conducted himself that such an intention may fairly be presumed. Documents in the form of letters of credit were addressed by the defendants

(*b*) *Ibid.* at p. 368.

to S. and Company, corn merchants, authorising them to draw bills on the defendants against shipments of grain. To the documents certain conditions were appended. S. and Company drew bills upon the defendants under the credit so opened without performing the conditions. The plaintiffs having notice of the conditions and knowing that they were unfulfilled, advanced money on the bills so drawn which the defendants refused to accept. In an action against the defendants for not accepting the bills, it was held that the documents did not create a contract between the plaintiffs and defendants, and that even if it did do so such contract was subject to such of the conditions as were not necessarily subsequent to the advance.(*a*)

A letter of credit contained a promise by the defendants to accept bills drawn upon them by their correspondents "against produce bought and paid for." The plaintiffs had knowledge of this condition and advanced money upon bills purporting to be drawn under the credit at a time when no produce had been bought or paid for. The defendants refused to accept these bills. In an action for not accepting :—Held, that the defendants were entitled to refuse to accept, as they only agreed to do so on the terms of the letter, and that if the plaintiffs advanced money on the faith of their correspondents' representations that the conditions had been fulfilled there was no guaranty on the part of the defendants of the truth of such statements. The defendants counter-claimed against the

(*a*) *Union Bank of Canada* v. *Cole*, 47 L. J. C. P, 100. This case was distinguished from *The Agra and Masterman's Bank*, 36 L. J. Ch. 222 ; L. R. 2 Ch. 391, and *Maitland* v. *Chartered Bank of India*, *supra*. "In the case of *The Agra and Masterman's Bank*" said COTTON, L.J., "the document itself showed an intention that it should be shown to other persons. In *Maitland* v. *The Chartered Bank of India*, again, the documents showed that they were intended to be used for showing to other persons. In that case, as in the other, there were no conditions, though it was attempted to be proved that there was a condition implied by the usage of trade. Here the conditions appear on the face of the document, and it is found that something which the defendants have made a condition of the drawing of the bill, and which ought to have been performed, was not performed."

plaintiffs for the amount of other bills accepted and paid which had been drawn under the same letter of credit. Held, that the defendants were not entitled to recover, as the presentation of the bills for acceptance was not a warranty by the plaintiffs that the bills had, in fact, been drawn against produce bought and paid for.(b)

When a bank issues a letter of credit, on the terms that the bills which they agreed to accept are to be covered by bills of lading to a like amount, suspension of payment by the bank, before there has been time for the letter of credit to be used, is not a breach or a repudiation of the contract; inasmuch as permission might have been given to the liquidators under the winding-up to negotiate the bills, and a claim by the holder of the letter of credit for damages for the alleged breach will be disallowed.(c)

Where the grantor of a marginal letter stops payment, and fails to meet it, the grantee is entitled to recover commission, notarial and all other necessary expenses.(d)

A bank granted a letter of credit to a company on terms that the company should ship tea and forward bills of lading, invoices, and policy of insurance on the tea to the bank, and should also draw on Barber and Company bills, to be accepted by Barber and Company to an amount sufficient to cover the amount authorised by the letter of credit. Barber and Company guaranteed the performance by the company of these terms "holding themselves responsible for the same." The company drew on the bank, and the bank accepted the bills, but owing to the failure of the bank after the dates when the bills were drawn, and before they became due, the company shipped no tea, and did not perform any of the terms agreed on. All the bills were eventually paid:—It was held, that

(b) *Chartered Bank of India, Australia, and China* v. *Macfadyen*, 64 L. J. Q. B. 367; 72 L. T. 428. See also *Union Bank of Canada* v. *Cole*, *supra*.

(c) *In re Agra Bank, Ex parte Tondeur*, L. R. 5 Eq. 160.

(d) *Prehn* v. *Liverpool Bank*, L. R. 5 Ex. 92; 39 L. J. Exch. 41; *In re General South American Company, Ex parte Banco de Lima*, 7 Ch. D. 637; 47 L. J. Chanc. 67; 37 L. T. 599; 26 W. R. 232.

the failure of the bank was no reason why the company should not have performed its part of the contract, and that Barber and Company were not relieved from their guaranty.(*a*)

Stamping. By the Stamp Act, 1891,(*b*) s. 32, of the term "bill exchange" for the purpose of the stamp duties includes (*inter alia*) a letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned ;(*c*) but a letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom is exempt from duty (see 4th exemption to the Schedule).

Circular notes. Circular notes are instruments similar to letters of credit, drawn by bankers in this country upon their foreign correspondents, in favour of persons travelling abroad.(*d*) The persons in whose favour these notes are granted usually carry with them a letter containing their signature (called a letter of indication), for exhibition to the correspondents on presentation of the notes, and for comparison with the signature, which the holders are required to give before payment, in order to satisfy the correspondents of their identity.

The subject of circular notes was very fully discussed in the case of *Conflans Stone Quarry Company* v. *Parker*,(*e*) the

(*a*) *Ex parte Agra Bank, In re Barber and Company*, L. R. 9 Eq. 725 ; 39 L. J. Bank. 39.

(*b*) 54 & 55 Vict. c. 39.

(*c*) The 16 & 17 Vict. c. 59, sched., defined a letter of credit to be "a document or writing whereby any person to whom any such document or writing is, or is intended to be, delivered or sent, shall be entitled, or be intended to be entitled, to have credit with, or in account with, or to draw upon any other person for, or to receive from such other person, any sum of money therein mentioned." Letters of credit were expressly chargeable with the stamp duty of one penny, imposed by that statute upon drafts payable to order on demand ; but letters of credit, whether drawn in sets or not, which were sent by persons in the United Kingdom to persons abroad, authorising drafts on the United Kingdom were exempt. This schedule is repealed by 33 & 34 Vict. c. 99.

(*d*) *Hare* v. *Copland*, 13 Ir. Com. Law Rep. 443.

(*e*) *Conflans Stone Quarry Company* v. *Parker*, 24 L. J. C. P. 51 ; L. R. 3 C. P. 1.

facts of which were as follows :—The plaintiffs, through an agent, obtained from the defendants, bankers in London, circular notes payable by certain correspondents of the defendants at various foreign towns mentioned in a " letter of indication " which accompanied the circular notes. The letter of indication and the circular notes were transmitted by the agent by post to the plaintiffs in Paris ; the letter of indication was duly received by them, but the circular notes were lost in transit. Held, that, as the defendants might possibly still be called upon to pay the circular notes, the plaintiffs, apart from any equitable relief to which they might be entitled upon giving a proper indemnity, were not entitled to recover the money which their agent had paid to the defendants upon tendering the letter of indication only.

" Upon the true construction of the letter of indication and circular notes." the Court said, " it is not obligatory upon the holder to cash the circular notes, though he purchases the right to do so. In the event of his not requiring to use them abroad, he may, after reasonable notice of his electing not to use them, require repayment at the banker's hands. . . . . The correspondent who cashes a circular note ought to, and commonly does, for his own protection, look at the letter of indication for the purpose of identifying the holder of the circular note, but his doing so is not made a condition precedent. If he cashes the circular note for the person mentioned in the letter of indication he has recourse against the banker, although from civility, over confidence, or mere omission, he may not have asked for the letter of indication. And, on the other hand, if after the letter of indication has been properly filled in by the rightful owner with his signature, a foreign correspondent cashes a circular note for a thief, who has succeeded in stealing the letter of indication and circular note, and in forging the name of the holder, no care in looking at the letter of indication can eke out a right to recover against the banker, as upon a payment to the right person."

CHAPTER XVI.

ORDERS TO BANKERS.

I. *Orders to Pay.*

Bills of Exchange.—We will next pass to the consideration of the duties of bankers, and their liabilities and rights, as regards bills of exchange made payable at their banking houses.

General or qualified acceptance.

It was for a long time much disputed whether a bill of exchange drawn generally, but accepted payable at a particular place named on it, ought to be presented at that place, in order to ground a cause of action by the holder against the acceptor. At length this doubt was set at rest by a decision of the House of Lords, which declared the law to be, that an acceptance made payable at a specified place was a qualified acceptance, which imposed upon the holder, in an action against the acceptor, the necessity of stating and proving presentment at that place, in order to recover on the bill.(*a*) The Legislature, however, thought this part of the law required some alteration, and accordingly the statute 1 & 2 Geo. 4, c. 78, was passed, enacting, that an acceptance payable, on the face of it, at the house of a banker or other place shall be considered to be a general acceptance, unless it be expressed to be payable there *only, and not otherwise or elsewhere.*(*b*)

And now by the Bills of Exchange Act, 1882, s. 19, it is enacted that an acceptance to pay at a particular place

(*a*) *Rowe* v. *Young*. 2 B. & B. 165; 2 Bligh. 391.

(*b*) The holder of a draft may refuse to take a special acceptance, and resort to the drawer at once. *Gammon* v. *Schmoll*, 5 Taunt. 353. A person who takes a qualified acceptance is bound to give notice to the drawer; for *non constat* that he will assent to the qualified acceptance, see 9 M. & W. 509. A draft accepted payable at a banker's is not a special or qualified acceptance, and is generally esteemed of higher commercial credit than a special or qualified acceptance, or an acceptance not made payable at a banker's.

is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.(c)

When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable. When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures (see section 52, sub-sections 1 and 2). But should the holder of such an acceptance by his delay prejudice the acceptor, the acceptor would probably be discharged, for his position in regard to such an acceptance seems, in this respect, analogous to the drawer of a cheque.(d) But although it is only necessary as

(c) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn (section 19). In particular, an acceptance is qualified, which is—

(a.) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

(b.) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

(c.) Local, as stated in the text.

(d.) Qualified as to time; a bill drawn on D., payable three months after date. B. accepts it, payable six months after date.

(e.) The acceptance of some one or more of the drawees, but not of all.

The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance (section 44).

Where a qualified acceptance is taken, and the drawer or indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. But where the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto (section 44). If the holder agrees to accept a qualified acceptance he should give notice of the fact to all prior parties, and not notice of dishonour. *Bentinck* v. *Dorrien*, 6 East, 199. It was held under the repealed statute of 1 & 2 Geo. 4, c. 78, that accepting a bill payable at a banker's "*only*" was a qualified acceptance, without adding the words "and not otherwise or elsewhere" (see *Halstead* v. *Skelton*, 5 Q. B. 86); and an acceptance at a particular place "and not otherwise" without adding the word "only," was held to be an equally qualified acceptance (see *Higgins* v. *Nichols*, 7 Dowl. 551). It is suggested that now under section 17 of the Bills of Exchange Act, 1882, an acceptance bearing either the word "only," or the words "and not elsewhere," would still be a qualified acceptance.

(d) See *Alexander* v. *Burchfield*, 7 M. & G. 1061; *Bishop* v. *Chitty*, 2 Str. Rep. 1195.

against the acceptor to prove presentment at a particular place when the acceptance is a qualified one as to locality, as against the drawer or indorsers, where a bill is accepted at a particular place, presentment must be made to that place before an action will lie against them.(*a*) In the same way, if a bill be drawn payable at a specified place, presentment there is a condition precedent to suing the drawer.(*b*)

Where presentment has to be made to a banker, the presentment must be made within banking hours.(*c*) Presentment for payment is dispensed with, where after the exercise of reasonable diligence it cannot be effected.(*d*) If a bill is accepted payable at a particular town, presentment, it is said, at all the banking houses at the town is sufficient.(*e*)

If a bill of exchange is accepted, payable at a banker's, and, in the course of business, is indorsed to the bankers, they, on suing the indorser, have no need to show that they presented it to the acceptor: for, as the bankers, at whose house the bill was to be paid, were themselves the holders of it, it was a sufficient demand, for them to turn to their books and ascertain the state of the acceptor's account with them, and a sufficient refusal, to find that he had no effects in their hands ;(*f*) and a letter written, on the day when the bill became due to the indorser, on behalf of the bankers, stating the acceptor's bill to be unpaid, and requesting the indorser's immediate attention to it, is sufficient notice of dishonour.(*f*)

Precisely the same has been laid down, as the law with respect to a promissory note, stated by the maker in a *memorandum* to be payable at a banker's, to whom it

(*a*) *Gibb* v. *Mather*, 8 Bing. 214 ; *Saul* v. *Jones*, 28 L. J. Q. B. 37.
(*b*) *Gibb* v. *Mather*, *supra* ; see Byles on "Bills" (15th edit.), 286.
(*c*) *Parker* v. *Gordon*, 7 East, 385 ; *Whitaker* v. *Bank of England*, 6 C. & P. 700 ; and see section 45 of Bills of Exchange Act, 1882.
(*d*) Section 46 (2), Bills of Exchange Act, 1882.
(*e*) *Hardy* v. *Woodroffe*, 2 Stark. 319.
(*f*) *Bailey* v. *Porter*, 14 M. & W. 44.

was indorsed in the course of business, and who sued the indorser.(*g*)

Where the drawer of a bill of exchange, accepted generally (subsequently to the passing of the 1 & 2 Geo. 4, c. 78), added the words "payable at R. and Co.'s, bankers, London," without the knowledge of the acceptor, and then indorsed it for valuable consideration, the bill being overdue, and the indorsee privy to the alteration, the alteration was held to be a material one, and the acceptor was held to be discharged; notwithstanding the argument which was pressed, that, since the statute, this was only a general acceptance, and that no demand was necessary against the acceptor, and that, consequently, in an action by the indorsee against the acceptor, it was not possible to contend that he was prejudiced.(*h*)

A bill was accepted, payable at a bank, which was also that of the drawer; the drawer discounted it with them, and

(*g*) *Saunderson* v. *Judge*, 2 H. Bl. 409. See Bills of Exchange Act, 1882, s. 87 (3).

(*h*) *Macintosh* v. *Haydon*, R. & M. 362; see *Burchfield* v. *Moore*, 23 L. J. Q. B. 261; 3 El. & Bl. 683. By section 64, sub-section 1, of the Bills of Exchange Act, 1882, it is now enacted that where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers; provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill, as if it had not been altered, and may enforce payment of it according to its original tenor. It should be noticed that an altered bill may, nevertheless, be avoided under the Stamp Act, 1891, by being made a new instrument requiring a fresh stamp. *Suffell* v. *Bank of England*, 9 Q. B. D. 574.

The following alterations in particular are made material by sub-section (2)—any alteration of the date (see *Hirschman* v. *Budd*, L. R. 8 Ex. 171); the sum payable (*Hamelin* v. *Brook*, 9 Q. B. 306); the time of payment (*Société Générale* v. *Metropolitan Bank*, 21 W. R. 335); the place of payment (*Tidmarsh* v. *Grover*, 1 M. & S. 735); and where a bill has been accepted generally, the addition of a plan of payment without the acceptor's assent.

To alter the number or date of a Bank of England note is a material alteration. *Suffell* v. *Bank of England*, 9 Q. B. D. 555; *Leeds Bank* v. *Walker*, 11 Q. B. D. 84.

The following have been held to be immaterial alterations:—"On demand" added to a bill on which no time for payment stated (*Aldous* v. *Cornwell*, L. R. 3 Q. B. 573); a "bearer" bill converted to an "order" bill (*Attwood* v. *Griffin*, 2 C. & P. 368), or the striking out of the words "or order" by the acceptor in the case of a bill payable to "D. or order." *Decroix* v. *Meyer*, 25 Q. B. D. 343.

indorsed it to them; they rediscounted, and, on maturity, paid it, without indicating to the holder whether they paid as indorsers, or as agents for the acceptor. The acceptor's account being overdrawn, the bank gave notice of dishonour to the drawer, and he was debited with the amount. It was held, they had a right to pay the bill as indorsers, taking time to inquire if they would honour the bill or not, and that there was no obligation upon them to inform the holder in what capacity they paid it.(*a*)

The fact of returning a bill, accepted payable at the acceptor's bankers, to the indorsee's bankers, at the Clearing House, with "orders not to pay" written on it, and "cancelled by mistake" also, does not enable the indorsee to recover against the bankers, as for money had and received; but if the bankers have been guilty of negligence, or want of due and reasonable care, and special damage has accrued therefrom to the holder, an action on the case may be maintained against them.(*b*)

An acceptor, having funds to meet the bill in the bankers' hands, is, it is submitted, not exonerated if they fail after the maturity of the bill, but before it has been presented, provided the holder has not been guilty of laches.(*c*)

A person who accepts a bill, payable at his bankers', is held thereby to give authority to the bankers to apply to the payment of it any funds of his in their hands, and there is no necessity for them to have any other or more specific authorization than the terms of the acceptance itself.(*d*) Bankers refusing to pay such an instrument

(*a*) *Pollard* v. *Ogden*, 2 El. & Bl. 459. See section 59 of Bills of Exchange Act, 1882.

(*b*) *Warwick* v. *Rogers*, 5 M. & G. 340; *Wilkinson* v. *Johnston*, 3 B. & C. 428; *Ingham* v. *Primrose*, 28 L. J. C. P. 294; *Novelli* v. *Rossi*, 2 B. & Ad. 757; *Raper* v. *Birkbeck*, 15 East 17; *Prince* v. *Oriental Bank Corporation*, L. R. 3 App. Cas. 325; 26 W. R. 543.

(*c*) *Sebag* v. *Abitbol*, 4 M. & S. 462; *Turner* v. *Haydon*, 4 B & C. 1; *Rhodes* v. *Gent*, 5 B. & A. 246.

(*d*) *Kymer* v. *Laurie*, 18 L. J. Q. B. 218. The bankers cannot sue on the bill, for it is *functus officio*, by the law merchant, when once paid by

when presented are liable to be sued by their customers.(e) The like authority would also be given to pay a promissory note which the customer has made payable at his bankers.

Banker paying a Forged Bill.—A banker paying a bill, accepted by a customer as above, to one who holds it under a forged indorsement, and who could not, therefore, give a legal discharge, cannot debit the account of the acceptor with the sum paid.(f) As to his right to recover as against the *bona fide* holder of the bill, the law does not appear to be settled, but the rule would seem to be that he is so entitled if he has been guilty of no negligence, and if the forgery was immediately discovered, and notice given to the holder.(g)

If, when a person accepts a bill payable at his bankers, his account with them is in such a state as not to be adequate to pay the whole amount for which the bill is accepted, and they pay the whole amount, for the honour of their customer, they would be entitled to recover from the customer the difference between the amount of his moneys in their hands, and the sum in the bill, either as so much money lent to him, or paid for his use. But in order to recover the amount, the bankers must prove the indorsement by the payee, as well as the acceptance by their customer; if either is a forgery, they will not be entitled to recover.(h)

Bill when paid.—Next, when is a bill made payable at a banker's said to be paid? Now, in a case of a contract to pay money, that can only properly be called payment, which is payment according to, and in the terms of, the

or on behalf of the acceptor. See also *Whitaker* v. *Bank of England*, 1 C. M. & R. 744; *Farley* v. *Turner*, 26 L. J. Ch. 710.

(e) *Hill* v. *Smith*, 12 M. & W. 618; *Bell* v. *Carey*, 8 C. B. 887.

(f) *Tucker* v. *Roberts*, 16 Q. B. 560; *Hall* v. *Fuller*, 5 B. & C. 750.

(g) *Cocks* v. *Masterman*, 9 B. & C. 902; *Smith* v. *Mercer*, 6 Taunt. 76; *Ingham* v. *Primrose*, 7 C. B. (N.S.) 52; *Burchfield* v. *Moore*, 23 L. J. Q. B. 261.

(h) *Forster* v. *Clements*, 2 Camp. 17.

contract;(*a*) so that payment, by a stranger, does not discharge the party contracting to pay, unless made by the stranger as his agent, and with his prior authority or subsequent ratification. Hence, payment by a stranger of the amount of a bill of exchange to the bankers, at whose house it was made payable by the acceptance, under an arrangement with them, whereby the person paying obtained possession of the bill for a collateral purpose of his own, is not a payment of the bill by the acceptor.(*b*)

Payment of Bills of Exchange by Cheques, Provisional or Absolute.—The branch bank of the Bank of England at Newcastle discounted a bill of exchange drawn by a customer upon H. and Company, and accepted by them payable at the bank of L. and Company, also bankers at Newcastle. According to the practice prevailing among bankers at Newcastle, the branch bank, on the morning when the bill became due, took it to L. and Company, who marked it for payment, and gave a credit note, indicating that it, with other moneys, was in order for payment and would be paid. About 2 P.M. on the same day, a clerk of the branch bank, in accordance with the practice, took all the cheques which had been received, drawn on L. and Company, together with the credit note, to the bank of L. and Company. The credit note was admitted into the total amount, and a cheque upon the branch bank was in accordance with the practice handed by L. and Company to the clerk for the amount of the balance due to the branch bank. At 3 P.M. the banks at Newcastle close to the public, but it is the practice for the bankers who keep accounts with the branch bank to attend at such bank, before it finally closes for the day at 4 P.M., for the purpose of having the day's accounts investigated,

(*a*) *Simpson* v. *Eggington*, 24 L. J. Exch. 313; 10 Exch. 845; *Church* v. *Bishop*, 2 Ves. sen. 272; *Smith* v. *Craven*, 1 C. & J. 500.

(*b*) *Deacon* v. *Stodhart*, 2 M. & G. 317: see *Cook* v. *Lister*, 13 C. B. (N.S.) 543; 32 L. J. C. P. 121.

and of rectifying any mistakes or errors which may have arisen in the course of the day, and finding and striking the final balances between them. When the bank of L. and Company closed at 3 o'clock it was ascertained that H. and Company had stopped payment, and that their balance was not sufficient to meet the bill. Notice was at once and before 4 P.M. given to the branch bank that the bill had been paid in error, and they were requested to take it back. Before such notice was received, the account of L. and Company had been debited with the amount in the accounts of the branch bank. The Court held, that as it was not shown that the giving the cheque was provisional only, or subject to rectification upon going over the accounts later in the day, such giving the cheque by L. and Company amounted to payment of the bill of exchange to the branch of the Bank of England, and that the customer was entitled to have credit with them for the amount of the bill.(c)

Specific Appropriation of Moneys to take up Bills.—No action either at law or in equity will lie by the holder against a banker for refusing to pay a bill so accepted, there being no privity between them. A. having accepted a bill of exchange paid money into his bank upon the express understanding that it was to be applied to taking up the bill at maturity. He suddenly died before the bill fell due, and the bank retained the money in satisfaction of moneys owing to them upon his general account. The bill was returned dishonoured to the drawers, who thereupon sued the bank in equity for the amount, Held, that there was no privity to sustain the suit.(d) An action, however, would lie by the holder against the bankers for money had and received to his use, if they had consented to hold it to his use ; provided, it is submitted, that consent

(c) *Pollard* v. *Bank of England*, 40 L. J. Q. B. 233 ; L. R. 6 Q. B. 623.
(d) *Hill* v. *Royds*, L. R. 8 Eq. 290 ; 38 L. J. Ch. 538 ; *Stewart* v. *Fry*, 1 Moore, 74 ; 7 Taunt. 339 ; *Moore* v. *Bushell*, 27 L. J. Ex. 3.

were in fact or impliedly communicated to the holder.(*a*) But money paid in, by a customer, expressly for the purpose of meeting a bill, accepted by him, and lying at the bank for payment, and appropriated by the bank for that purpose, is, so far as the customer is concerned, money paid and received to the use of the holder of the bill, and cannot be applied by the bank to the general account of the customer.(*b*)

But where a person paid a sum into a country bankers' with written directions to apply it to meet a bill of exchange payable the next day at the country bankers' London agents, and the country bankers stopped payment the next day without having advised their London agents of the payment of the sum, and the bill on being presented was dishonoured, it was held that the country bankers, *having made no specific appropriation of the sum*, he was only entitled to prove as a general creditor.(*c*)

Customers of country bankers paid in to the bankers' a sum of money in bank notes, and also some bills of exchange, to be remitted to London in order to meet certain acceptances. The bankers sent to their London agents the bills, and some bank notes, with a letter directing them to pay a certain sum of money, also giving them notice of the acceptances as payable at their bank, and giving directions as to other business. The country bankers stopped payment, owing a large balance to the London bankers :— Held that, as between the country customers and the London bankers, there was no appropriation of the bills and notes to meet the acceptances, and that the London

(*a*) *De Bernales* v. *Fuller*, 14 East, 590 ; *Prince* v. *Oriental Bank*, 3 App. Cas. 325 ; 47 L. J. C. P. 42 ; *Williams* v. *Everitt*, 14 East, 584, and *ante*, p. 5.

(*b*) *De Bernales* v. *Fuller*, *supra* ; *Hill* v. *Smith*, 12 M. & W. 618 ; *Farley* v. *Turner*, 26 L. J. Ch. 710 ; *Prince* v. *Orential Bank*, *supra* ; *Chartered Bank of India* v. *Evans*, 21 L. T. 407.

(*c*) *Moore* v. *Bushell*, 27 L. J. Ex. 3 ; *Farley* v. *Turner*, *supra* ; *Hill* v. *Royds*, *supra*. See also *Thomson* v. *Simpson*, L. R. 5 Ch. App. 659 ; *Louisiana Bank* v. *Bank of New Orleans*, L. R. 6 H. L. 352 ; *Barned's Banking Company*, *In re* ; *Massey*, *Ex parte*, 39 L. J. Ch. 635.

bankers could retain the bills and notes without meeting the acceptances.(*d*)

Cancellation by Bankers by Mistake.—If a banker, at whose house a bill is accepted payable, by mistake (not under circumstances showing want of due care) cancels the acceptance and refuses to pay the bill, he does not necessarily render himself liable to the holder, in an action on the case, or otherwise. Where, on the other hand, he has been guilty of such want of due care, and damage has ensued in consequence to the holder, an action will lie against him.(*e*)

Death of Customer.—A banker's authority to pay acceptances is revoked by his customer's death, but if without notice of such death, he pays an acceptance, he can claim against the customer's estate for the amount, or, it would seem, reimburse himself out of the funds of the customer in his hands.(*f*)

Promissory Notes.—By section 87 of the Bills of Exchange Act, 1882, where a promissory note is *in the body of it* made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case presentment for payment is not necessary in order to render the maker liable.

So that where the place of payment is not mentioned *in the body of the note*, but merely in a memorandum at the foot, then it is no part of the contract that the note should be payable at the bank, or place mentioned, and it is not necessary to present,(*g*) or allege presentment.(*h*)

(*d*) *Johnson* v. *Robarts*, L. R. 10 Ch. App. 505; 44 L. J. Ch. 678.

(*e*) See *Ingham* v. *Primrose*, 28 L. J. C. P. 294; 7 C. B. (N.S.) 82. As to cancellation by mistake by other parties not destroying a bill, see *Raper* v. *Birkbeck*, 15 East, 17; *Davidson* v. *Cooper*, 11 M. & W. 778.

(*f*) *Rogerson* v. *Ladbrooke*, 1 Bing. 93. As to revocation of authority to pay cheques, see Bills of Exchange Act, 1882, s. 75.

(*g*) *Williams* v. *Waring*, 10 B. & C. 2.

(*h*) *Sanderson* v. *Judge*, 2 H. Bl. 510; *Masters* v. *Baretto*, 19 L. J. C. P. 50; per Lord CAMPBELL, C.J., in *Warrington* v. *Early*, 23 L. J. Q. B. 48.

And as regards the indorser, by sub-section (3) it is enacted that where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but where a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

II. *Orders other than mere Orders to pay.*

Hitherto we have been considering those orders to pay commonly coming under a banker's notice, but besides these there are other orders respecting the funds of a customer, not strictly orders to pay, and less frequently to be met with in practice. The first of these are what may be termed orders in the nature of an appropriation or assignment of funds in favour of a third party.(*a*)

Questions frequently arise as to how far a banker who has received an order to appropriate certain funds of his customer in favour of a third party, which order has been subsequently countermanded, is justified in nevertheless making the payment. Before the Judicature Acts, the rule in *law* apparently was this :—If the revocation was made before the banker had assented to the appropriation, and before that assent had been communicated to the payee, the banker was bound to act upon it; and if he made the payment he did it at his risk, and could not charge his customer therewith ;(*b*) the reason of this being that until the assent had been given and communicated to

(*a*) Further, an order for the payment of money may be stamped either by the person delivering it or the person paying it; but the omission to stamp cannot be subsequently cured by the payment of a penalty. See Stamp Act, 1891, ss. 37, 38. In the case of an assignment the debtor becomes, on notice of the assignment, liable to the assignee; whilst as regards the Stamp Acts it may be stamped at any time on payment of the duty and penalty. See *Buck* v. *Robson*, 3 Q. B. D. 691; and see *Brice* v. *Bannister*, *infra*, and Stamp Act, 1891, ss, 15, 62.

(*b*) See *Gibson* v. *Minet*, 2 Bing. 7; *Williams* v. *Everitt*, 14 East, 582; *Morrell* v. *Wootton*, 16 Beav. 197; *Hodgson* v. *Anderson*, 8 B. & C. 342.

the payee no property in the funds passed to him, and the customer's right of control over them still continued.(*c*) In equity, the assent of,(*d*) or even the communication to, the banker was immaterial,(*e*) so far as the assignee's right as against the assignor went, for an order given by a debtor to his creditor upon funds in the hands of a third party has always been held to be sufficient to constitute an equitable assignment.(*f*) That the assignee should have had notice of the assignment, however, was absolutely necessary; for it has always been a well-established principle of equity that a mere order from a creditor to his debtor to pay a third person, uncommunicated to such person, passes no interest in the funds so directed to be paid.(*g*) It must have appeared, moreover, from the order that there was an intention to charge the funds in favour of the payee.(*h*) A mere cheque was held not to be an equitable assignment of a drawer's balance at his banker's.(*h*) Now, by section 25, sub-section (6), of the Judicature Act, 1873, all debts or other legal choses in action are now assignable,(*i*) provided the assignment be an absolute one(*k*) (and not by way of charge only), and be in writing under the hand of the assignor,(*l*) and notice in writing(*m*) thereof be given to the debtor. The assignee takes subject to all equities affecting the assignor.(*n*)

Cheque not an equitable assignment.

(*c*) *Williams* v. *Everett*, 14 East, 582; *Walker* v. *Bostron*, 9 M. & W. 411; *Lily* v. *Hays*, 5 A. & E. 548; *Noble* v. *National Discount Company*, 5 H. & N. 225; 29 L. J. Ex. 210.

(*d*) *Gorringe* v. *Irwell*, 34 Ch. D. 128.

(*e*) *Ex parte South*, 3 Swanst. 393; *Rodick* v. *Gandell*, 1 D. M. & G. 780; *Diplock* v. *Hammond*, 2 Sm. & G. 141; 5 De G. M. & G. 320.

(*f*) *Row* v. *Dawson*, 1 Ves. sen. 331; *Letts* v. *Morris*, 4 Sim. 607; *Burn* v. *Carvalho*, 4 M. & C. 690.

(*g*) *Farquhar* v. *City of Toronto*, 12 Gr. 186.

(*h*) *Hopkinson* v. *Foster*, L. R. 19 Eq. 74.

(*i*) A debt not due may be assigned: *Walker* v. *Bradford Bank*, 12 Q. B. D. 516.

(*k*) As to what is an absolute assignment, see *Tancred* v. *Delagoa Bay Company*, 23 Q. B. D. 239, disapproving *National Provincial Bank* v. *Harle*, 6 Q. B. D. 626; *Comfort* v. *Betts* [1891], 1 Q. B. 737; and *Walker* v. *Bradford Bank*, *supra*.

(*l*) See *In re Richardson*, 30 Ch. D. 396.

(*m*) This may be given after the death of the assignor: *Walker* v. *Bradford Bank*, *supra*.

(*n*) *Young* v. *Kitchin*, 3 Ex. D. 127; 47 L. J. Ex. 579; *Government of*

Assignments of equitable choses in action are not affected by this enactment, except that the assignee may now sue in any court, whereas before he could only sue in equity.(*a*) Where the section has not been complied with the assignor cannot be joined as co-plaintiff without his consent, or without being communicated with, and properly indemnified.(*b*) An order to pay a sum of money out of a debt, if it amounts to an absolute assignment, must be stamped as such and not as an order for payment.(*c*)

It is important to point out this distinction between an order to pay and an assignment of a debt, viz., that where the direction to pay amounts to no more than what is technically termed an order for the payment of money, the liability of the drawee is not to the payee, but to the drawer.

So, it was held, by a person depositing money at his bankers, that it should be distributed, in named amounts, between certain persons, did not make the bankers liable to those persons, or any of them; they were only responsible for the sum deposited, to the depositor; although they were aware of the destination of the money.(*d*) Such an order remains revocable by the party giving it, until the occurrence of one of two events,—the payment over by the bankers to the persons for whom the sum was deposited, or the making of some binding engagement by the bankers with them, which gives the latter a right of action against the former.(*e*) For instance, had the bankers stated to those persons, that they held the money for them, thus assenting to the order of their customer,

Newfoundland v. *Newfoundland Railway Company*, 13 App. Cas. 199; *West of England Bank* v. *Batchelor*, 30 W. R. 364.

(*a*) See "White and Tudor's Leading Cases" (6th edit.), vol. ii., 836.

(*b*) *Turquand* v. *Fearon*, L. R. 4 Q. B. D. 280. See *In re Whitting*, 10 Ch. D. 615; *Goodman* v. *Robinson*, 18 Q. B. D. 332.

(*c*) *Brice* v. *Bannister*, 3 Q. B. D. 569; *Buck* v. *Robson*, *ib.* 686; *West of England Bank* v. *Batchelor*, 30 W. R. 364; *Government of Newfoundland* v. *Newfoundland Railway*, 13 App. Cas. 199; *Christie* v. *Taunton* [1893], 2 Ch. 175.

(*d*) *Pinto* v. *Santos*, 5 Taunt. 447.

(*e*) *Gibson* v. *Minet*, 2 Bing. 7; *Williams* v. *Everett*, 14 East, 592; *Scott* v. *Porcher*, 3 Mer. 652; *Lily* v. *Hays*, 5 A. & E. 548; *Brind* v. *Hampshire*, 1 M. & W. 372.

that would have rendered them liable to the persons for whom they held the money, for their assent could not be retracted.(*f*)

A letter by bankers, stating that a special credit for a certain sum has been opened by them at the instructions of their customer, in favour of any particular person who supplies goods on the faith of it, does not, of itself, constitute a specific appropriation or an equitable assignment of that sum in their hands, so as to make them liable to be sued in a court of equity as trustees for the person in whose favour the credit has been opened.(*g*)

Order to receive Dividends.—By the Stamp Act, 1891, s. 81, a letter or power of attorney for the sale, transfer, or acceptance of any of the government or parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds.(*h*) A writing under hand only containing an order, request, or direction from the owner or proprietor of any stock to any company or to any officer of any company, or to any banker, to pay the dividends or interest arising from any such stock to any person therein named, is not chargeable with duty as a letter or power of attorney. But although such order, request or direction is not liable to stamp duty as a letter or power of attorney, it requires to be stamped as an order for money payable on demand under sub-section (*b.*) of section 32. When bankers hold a power of attorney from the trustee of a married woman to receive and pay to her the dividends on government stock settled

(*f*) *Frühling* v. *Schroeder*, 2 Bing. N. C. 77; *Walker* v. *Rostron*, 9 M. & W. 411, 421.

(*g*) *Morgan* v. *Larivière*, L. R. 7 H. L. 423; 44 L. J. Ch. 457.

(*h*) A letter or power of attorney or other instrument in the nature thereof is chargeable as follows :—

For the receipt of the dividends or interest of any stock,—

Where made for the receipt of one payment only, 1*s.*

In any other case, 5*s.*

See 54 & 55 Vict. c. 39, Sched. I (3).

to her separate use, it will be no payment, if they pay the dividends to her creditors or nominees at her request.(*a*)

Banker as Stakeholder.—In considering the position of the parties concerned where money has been paid into a bank to abide the issue of an event it is necessary to call attention to the Act 8 & 9 Vict. c. 109, s. 18. By that section it is enacted that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void; and no suit shall be brought or maintained, in any court of law or equity, for recovering any sum of money or valuable thing, alleged to have been won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made. But, it is further provided that the preceding enactment shall not apply to a subscription or agreement to subscribe, or contribute for, or towards, any plate, prize or sum of money to be awarded to the winner of any lawful game. The effect of the words "no suit shall be brought or maintained," &c., is to prohibit the recovery by the winner from the loser of money which has been won in such a transaction as that mentioned in that part of the section, or which has been deposited by such loser in the hands of a stakeholder to abide the event; and the statute does not apply to cases wherein the party seeks to recover his own stake upon a repudiation of the wagering contract; either party being able to recover the sum he himself has deposited, although he does not demand it till after the event.(*b*)

(*a*) *Clerk* v. *Laurie*, 1 H. & N. 452. As to the evidence of the receipt of dividends afforded by entry in the banker's books, see *Hume* v. *Bolland*, 1 C. & M. 330.

(*b*) *Diggle* v. *Higgs*, L. R. 2 Ex. D. 422; 25 W. R. 777. See also *Hampden* v. *Walsh*, L. R. 1 Q. B. D. 189; 24 W. R. 607; *Thacker* v. *Hardy*, 4 Q. B. D. 685; *Read* v. *Anderson*, 13 Q. B. D. 779; *Cohen* v. *Kittell*, 22 Q. B. D. 650. See, also, 55 & 56 Vict. c. 9, the effect of which is that money paid by A. on behalf of B., at the request of B., in payment of bets lost by B., to other persons, cannot be recovered by A. from B.; and the fact that A. paid the money in ignorance of the nature of the transaction would, it has been held, make no difference: *Tatam* v. *Reeve* [1893], 1 Q. B. 44; 62 L. J. Q. B. 30. See also on this statute, *De Mattos* v. *Benjamin*, 70 L. T. 55.

Order to obtain Acceptance.—If a person delivers a bill of exchange to his bankers to get accepted for him (he being payee), and acceptance is refused, but they omit to communicate the circumstance to the depositor, he has a right of action against them, and may recover damages in proportion to the injury he can show he has sustained.(*c*)

Order to accept Drafts against Bills of Lading.—A banker, receiving instructions from his customer to accept bills of exchange which a correspondent of his would draw against bills of lading, is not bound to ascertain the genuineness of the bills of lading before accepting or paying the bills of exchange; and if the banker pays the bills, although the bills of lading should afterwards turn out to be forgeries, he will be entitled to recover from his customer what he may have paid in respect of the bills of exchange.(*d*)

Order to transfer or place to Credit of Another—We next investigate the effect of an order given by a customer to his bankers, directing them to transfer a sum of money from his account to the credit of another person, who also banks with them.

A. is debtor to B. A., with the consent of B., desires his bankers, who also are the bankers of B., to place to the credit of B., a sum of money (for goods sold), so as to make the transaction similar to a bill of exchange at one month, which the bankers consent to do, but only consider

(*c*) *Van Wart* v. *Woolley*, 3 B. & C. 439; *Van Dieman's Bank* v. *Victoria Bank* L. R. 3 P. C. 526; 40 L. J. P. C. 28.

(*d*) *Woods* v. *Thiedmann*, 1 H. & C. 478. *Ulster Bank* v. *Synnott*, 5 Ir. R., Eq. 595; a bill of exchange drawn upon the plaintiff by his correspondent abroad against a bill of lading was sent through the defendants, who were bankers for presentation and collection. The bank presented the bill to the plaintiff with this memorandum: "The bank holds bills of lading and policy for 251 bales of cotton for William Cumming." The plaintiff accepted the bill without asking to see the bill of lading and afterwards returned it before it was due, paid the money and received the bill of lading, which proved to be a forgery. Upon bill filed against the bank to recover the money so paid upon the bill of exchange:—Held that the memorandum did not amount to a guaranty of the bank that the so-called bill of lading was genuine, and that the plaintiff had no equity to recover back the money. *Leather* v. *Simpson*, L. R. 11 Eq. 398.

it as a payment to be made at a future day. Such a transaction does not amount to a payment; and where the bankers became bankrupt before the day on which the credit would expire, the Court held that A. was not discharged by such inchoate payment.(*a*)

So, where A. pays in money, to be placed to the credit of B., upon a condition; the money in the meantime to stand, in the bankers' books, in the name of A., it is at his risk, and the loss is his, if the bankers fail before the condition is complied with, though B. has written to desire it to be paid in generally.(*b*)

But where A., in October, desired B. to pay his rent then due to A., into A.'s bankers, and, by mistake, the money was not then paid, but B., having also an account at the same bank, ordered the amount to be transferred to the credit of A., which transfer was actually made on Thursday, the 8th December, and B. wrote the next day to A. mentioning this; but A., living at a distance, did not receive the information till Sunday, the 11th December, and the bankers failed on Saturday, the 10th December; this was held to be a sufficient payment by B., although, at the time of the transfer, B.'s account was overdrawn by 900*l*., and he had no general directions to pay his rent into the bank.(*c*)

Order to invest.—Although there is nothing of a fiduciary character in the ordinary relations between banker and customer, who are, under such circumstances, simply debtor and creditor, the latter having the right to call for his money, or any part of it, immediately, yet, if the dealings between them go beyond this point in any way, and the banker is employed by the customer to make investments for him, or otherwise to manage his monetary transactions, then the banker is, in that respect, the agent of the customer, and is bound to observe complete good

(*a*) *Pedder* v. *Watts*, 2 Chit. 619.
(*b*) *Calley* v. *Short*, Cooper Ch. R. 148; *Brown* v. *Rowley*, 2 B. & P. 518.
(*c*) *Eyles* v. *Ellis*, 4 Bing 112; 12 Moore, 306.

faith and use reasonable care in the performance of the customer's orders.

But where a partner in a banking house undertook to invest a sum of money on good security for a customer of the firm, and such person was induced, from the belief that she was dealing with him as a partner, to advance the money, and the representations of the partner proved to be fraudulent: it was held that, in the absence of evidence of notice to the other partners, they could not be made liable for such a transaction.(*d*)

Orders as to Trust Funds.—Bankers, generally speaking, are under no obligation to make inquiries as to the source from whence moneys paid in by a customer are derived; or the purposes for which cheques are drawn by him.(*e*)

In order to hold a banker justified in refusing to pay a cheque of his customer, the customer being a trustee, and drawing a cheque as trustee, there must be a misapplication of the money intended by the trustee, so as to constitute a breach of trust, and the banker must be cognizant of that intention. Where that is the case, and he nevertheless makes the payment, and a breach of trust follows, he will be liable to refund the money at suit of the *cestui que trust*. The existence of a personal benefit to a banker, designed or stipulated for, as a consequence of the payment, would be strong evidence that the banker was privy to the breach of trust. R., G. and Company, bankers, had acted as such to T. J., who carried on business with his son-in-law under the style of J. and M., but whose accounts with them were kept in his own name alone, and were unsettled at his death. He left a will bequeathing all his property to the use of his wife for life, and after her death to be divided among their children as she might think fit; part of the property consisted of life policies which were put into the

(*d*) *Bishop* v. *Countess of Jersey*, 2 Drew, 143; 23 L. J. Ch. 483.
(*e*) *Thomson* v. *Clydesdale Parish* [1893], App. Cas. 287, 289; *Ex parte Kingston, In re Gross*, L. R. 6 Ch. App. 632; *Bodenham* v. *Hoskins*, 2 De G. M. & G. 903.

hands of the bankers, together with the probate of T. J.'s will, and they received the amount of the policies, made up their accounts, and, after deducting their own unsettled claims, declared a certain sum to remain due from themselves to the executrix. She continued her husband's business with his late partner under the style of J. and M., and a new account was opened with the bankers in the name of the new firm, and she, as executrix, drew a cheque for the amount stated to be due to her, and paid it in to the bankers to be credited to the firm of J. and M., and it was so credited and paid out, with other money, on account of cheques drawn by the new firm:—Held, that these circumstances were not, in themselves, sufficient to show that a breach of trust had been committed, and that the bankers knew of the intention to commit it, so as to render them liable (in a suit by the children of the testator) to replace the money.(a)

Following Trust Moneys in Banker's Hands.—If money held by a trustee(b) or other person in a fiduciary character(c) has been paid by him to his account at his bankers the person for whom he held the money can follow it, and has a charge on the money in the banker's hands.

Application of Clayton's Case (1 Mer. 572).—If a person holding money as a trustee or in a fiduciary character pays it into his own account, and mixes it with his own money, and afterwards draws out cheques in the ordinary way the rule in *Clayton's Case*, attributing the first drawings out to the first payments in, does not apply, and the drawer is taken to have drawn out his own money in preference to the

(a) *Gray* v. *Johnston*, L. R. 3 H. L. 1. See also *Bridgman* v. *Gill*, 24 Beav. 304; *Wilson* v. *Moore*, 1 My. & K. 337; *Child* v. *Thorley*, 16 Ch. D. 151.

(b) *Hallett's Estate, In re*, 13 Ch. D. 696; 49 L. J. Ch. 415. See, particularly, judgment of JESSEL, M.R., in which all the cases on the subject are reviewed. See also *Hancock* v. *Smith*, 58 L. J. Ch. 525; 41 Ch. D. 456, and chapter on "Appropriation of Payments."

(c) *Ibid.*, overruling *Ex parte Dale and Company*, 11 Ch. D. 772.

trust money.(*d*) As between two *cestuis que trusts* whose money the trustee has paid into his own account at his bankers the rule in *Clayton's Case*, however, does apply.(*e*)

Illegal Orders of Customer.—A banker, who permits a sum of money to be paid into his bank for the purpose of being paid over, for corruptly procuring an appointment under Government, may be indicted for a conspiracy with those who are to procure the appointment and to receive the money.(*f*)

The same principle would seem to apply to money deposited with a banker as stakeholder, as it were, to be paid over, after an election, for the purposes of bribery.

So, wherever bankers receive money, and agree to hold it, to be paid over for any purpose forbidden by the law, it seems they would be alike liable, for, in such a case, an individual stakeholder would be liable, if fixed with a knowledge of the illegal purpose, and bankers are in the same situation as other individuals.

(*d*) *Re Hallett's Estate*, *supra*, per Court of Appeal, THESIGER, L.J., dissenting. *Pennell* v. *Deffel*, 4 D. M. & G. 372, on this point not followed.
(*e*) *Ibid.*, per FRY, J., *In re Stenning* [1895], 2 Ch. 433.
(*f*) *Rex* v. *Pollman*, 2 Camp. 233.

CHAPTER XVII.

ACCOUNTABLE OR DEPOSIT RECEIPTS.

Accountable receipts.

The subject of accountable receipts, given by bankers, is one of some importance, but one of which the development, by means of judicial decision, does not appear to be in proportion to what one might desire; in other words, but few questions on or relating to the subject have been presented to the Courts for decision.

Where a person deposits money with bankers, without intending that it should be called for from time to time by cheques, it is a frequent practice for them to contract to pay interest on the money thus lent to them, and to give an accountable receipt—that is, a memorandum of the receipt of the principal, an acknowledgment that they are accountable for it on demand and a promise to pay interest upon it during the time it remains in their hands;(*a*) but the latter clause is not always, or necessarily, a part of the instrument.

It must be borne in mind that bankers are not liable to pay interest on money deposited with them, in the absence of an agreement to do so.(*b*)

An acknowledgment in this form—

"Mr. T. has left in my hands 200*l*.

"J. A."

does not require a stamp to make it evidence.(*c*) By the Stamp Act, 1891, Sched. I., tit. "Receipt," a receipt given for money deposited in any bank, or with any banker, to be accounted for, and expressed to be received of the

(*a*) *Way* v. *Bassett*, 5 Hare, 56. Sometimes it is stated expressly not to bear interest, as in *Stapleton* v. *Stapleton*, 14 Sim. 186, 187.

(*b*) *Edwards* v. *Vere*, 5 B. & Ad. 282.

(*c*) *Tomkins* v. *Ashby*, 6 B. & C. 541; *Cory* v. *Davis*, 14 C. B. (N.S.) 370.

person to whom the same is to be accounted for, is exempt from stamp duty.(*d*) But receipts or acknowledgments given by bankers for sums paid to, or deposited with them for or upon letters of allotment of shares, or in respect of calls upon script or shares of or in any company, are not exempt. If the sums so paid amount to 2*l*. or upwards, the bankers must give a penny stamped receipt upon each payment.(*e*)

A., to whom the Sheffield and Rotherham Bank was indebted, took accountable receipts for the sums due from the bank. The course of dealing was, that as long as the sums for which these receipts were given remained in the bankers' hands, the receipts were returned to the bank once a year to be cancelled, when the interest for the past year was either paid or allowed in account, and fresh receipts, in place of the cancelled ones, were given. A. died, and, pending a contest for the administration of his estate, these accountable receipts came into the hands of a stranger, who, by a fraud, obtained payment of the sums due upon them. The receipts were returned, and they were afterwards cancelled by tearing off the signature at the foot.

The administrator of A. was held, there being nothing to show that the receipts were transferable so as to entitle the holder to demand payment of the sums represented by them, to be in a position to maintain a suit in equity against the bank for payment of those sums.(*f*)

Here, it is to be observed, the mode in which payment was obtained was this :—The receipts were presented at the Worksop Branch of the Nottinghamshire Bank, with an indorsement purporting to be that of A., and, it being unknown to the manager of that branch that A. was dead, the money was paid and the receipts given up. Their

(*d*) But if it contains an agreement to pay interest, then, it is submitted, it would require stamping as an agreement. See *Bank of Scotland* v. *Watson*, 1 Dowl. 40.

(*e*) Stamp Act, 1891, s. 101.

(*f*) *Pearce* v. *Creswick*, 2 Hare, 286.

amount was, in the course of business, charged by the Nottinghamshire Bank to their London bankers, to whom the receipts were remitted. Shortly afterwards, the Sheffield and Rotherham Bank directed the same London bankers to give credit to the Nottinghamshire Bank for the amount, and the receipts were delivered up to the Sheffield and Rotherham Bank.(*a*)

Agent of Banker no implied Authority to receive Money on Deposit.—Certain persons carried on business as bankers at Brechin. They were also the general agents for the Bank of Scotland at that place. A person deposited with them a sum of money, intending to deposit it on his own account with the Bank of Scotland. He received an acknowledgment headed, "Bank Office, Brechin," and signed by the names of the persons who were both private bankers and general agents for the Bank of Scotland. The House of Lords held that he could not, on this note, recover the deposit from the Bank of Scotland.(*b*)

On Change of Firm.—A person depositing money at bankers, and taking their accountable receipt, does not, by continuing to leave his money in the bank, after a dissolution of the original firm, and the constitution of a new one, consisting of some of the old members and of other persons, discharge the former partners who had retired, although he receives interest regularly from the new firm, and gives no notice, and continues to transact business with them in the common course, and that for a period of four years until they became insolvent. Such facts are not sufficient to enable a jury to come to the conclusion that he did discharge the outgoing members of the firm,(*c*) and

(*a*) *Pearce* v. *Creswick*, 2 Hare, 286.
(*b*) *Bank of Scotland* v. *Watson*, 1 Dowl. 40.
(*c*) *Gough* v. *Davies*, 4 Price, 200; *Daniel* v. *Cross*, 3 Ves. 277; *Bilborough* v. *Holmes*, L. R. 5 Ch. D. 255. See, as to evidence to show knowledge of retirement from banking firm and intention to credit new firm, *Hart* v. *Alexander*, 2 M. & W. 484. It might, in some cases, be found in practice more desirable for the customer to transfer the credit to the new

assent to transfer the credit to the new firm, though he had made fresh deposits with them and received fresh accountable receipts from them.(*d*) But where a customer of a banking partnership, after the death of one of the partners, removed money from his current account to a deposit account bearing interest at the same bank, and received a deposit note from the surviving partner, it was held that there was sufficient evidence of novation to discharge the estate of the deceased partner from liability for the amount placed on deposit.(*e*)

Statute of Limitations.—The Statute of Limitations applies to deposit notes.(*f*) A. deposited moneys with B., C., and D., who were partners in banking, carrying on business under that name, and received from them promissory notes, in which they promised to pay him the amounts, three months after sight respectively, with interest. In September, 1831, A. died. In March, 1837, B. died, having appointed C. and X. his executors. C. and D. continued the banking business, in the same name as before, till 1842, and interest on the promissory notes was regularly paid by the firm until that time. In May, 1842, the customers of the bank were invited to transfer their accounts to the Isle of Wight Joint-Stock Banking Company. In December, 1843, C. and D. became bankrupt. In the same month, the executors of A. filed a bill in equity against the executors of B. and the devisees under his will, for payment of the amounts of the promissory notes out of the personalty or real estate of B. The acts of the surviving partners of B. were held not to have the effect of taking the debt upon the notes out of the operation of the Statute of Limitations, as against the real or personal estate of the deceased partner, for that acts done by one of the surviving partners, who was executor of the deceased partner—which

firm, as regards the question of enforcing the responsibility: *Lyth* v. *Ault*, 7 Ex. 669; 21 L. J. Ex. 217.

(*d*) See also *In re Head* [1893], 3 Ch. 426.

(*e*) *In re Head* (No. 2) [1894], 2 Ch. 236, distinguishing *In re Head*, *supra*.

(*f*) See *Pott* v. *Clegg*, 16 M. & W. 311.

acts the surviving partners, as such, were bound to do—could not *primâ facie* be considered to have been done in the character of executor.(*a*)

Double Liability.—Deposit receipts may be given in such a way as to create a double liability, as under the following circumstances:—

John O'Brien, father of Daniel O'Brien and Catherine Callaghan, lodged 150*l.* in a bank upon a deposit receipt in his own name. Upon Daniel's producing the receipt some time afterwards, and demanding the interest, he was refused, the bank paying only to the depositor in person; John, upon this, used for some time to accompany Daniel, and receive the interest, taking the fresh receipt in his (John's) name, on each occasion. Afterwards he obtained permission that Daniel should receive payments upon producing the receipt indorsed by John. Then Daniel, by his directions, paid an additional sum of 5*l.* into the bank, and obtained a new deposit receipt for the whole amount, 155*l.*, then in the hands of the bank, but in the name of Catherine O'Brien (afterwards Callaghan), Daniel telling the manager that his father intended 155*l.* to be the portion of his daughter Catherine, but that he desired to retain a control over it during his life, and that he wished the deposit receipt should be drawn in her name. A few days afterwards John O'Brien died; Daniel took out administration, *testamento annexo*, and, as administrator, claimed the 155*l.* Shortly after, Catherine married, and she and her husband demanded payment of this money. Both Daniel and Catherine, with her husband, commenced actions against the bankers. They filed a bill of interpleader against both; which was, however, dismissed, on the ground that this was not the case of a double demand for one duty, but a case in which there might be two liabilities; and that a mere pretext of conflicting claims could not support a bill of interpleader, the Court being

(*a*) *Way* v. *Bassett*, 5 Hare, 55.

bound to see that there is a question to be tried. Here the transaction created a debt from the bank to Catherine, in consequence of the mode of dealing adopted by the bankers; they were not at liberty to resist her demand, or to treat the case as one of interpleader, because John's representative, who made the last deposit, and took the new receipt, chose to rescind the whole transaction. It is quite consistent with this view, that John's representative might still be able to recover against the bankers; for it was their own fault if they created a new liability in themselves, without obtaining a sufficient discharge from the original title to the money in their hands. It was pointed out by the Court, that by their application they asked it to destroy their own mode of dealing; for, if the cancellation of the old receipt, and the issuing of the new receipt, did not create a liability to the person named in the new receipt, the bankers' system of deposit receipts was defective.(*b*)

Transfer of Deposit Note.—A deposit note for money has been held to be like a deposit note for goods, and to pass by delivery of the instrument, and to require no assignment.(*c*) It is submitted, however, that this is only so where the money is locked up in a box, and is capable of being returned in specie; where it is not so the customer really loses his actual money, and receives in return a right of action to recover a similar amount, which is a mere chose in action, and only assignable as such.(*d*)

A certificate of the deposit of money in a bank has been held in America to be a negotiable instrument.(*e*)

Donatio mortis causâ.—A deposit note may be the

(*b*) *Cochrane* v. *O'Brien*, 2 J. & L. 388.

(*c*) *Woodhams* v. *Anglo-Australian and Universal Life Assurance Company*, 3 Giff. 238; 8 Jur. (N.S.) 148.

(*d*) See *Sibree* v. *Tripp*, 15 M. & W. 37; "Cavanagh on Money Securities," p. 40. See also *Moore* v. *Ulster Banking Company*, 11 Ir. R. C. L. 512.

(*e*) *Miller* v. *Austen*, 13 Howard, U. S. Rep. 218.

subject-matter of a good *donatio mortis causâ*.(a) And it has been held that the gift of such a note is not defeated by endorsing a cheque on it, although the cheque was invalid, not having been presented in the donor's lifetime, if the facts show the donor intended to give not merely the cheque, but also the deposit note.(b)

Forgery.—By 24 & 25 Vict. c. 98, s. 23, it is felony to forge an accountable receipt, whether for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on, or assignment of, any such accountable receipt; and so is the altering, or offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any such accountable receipt, with intent to defraud. The punishment for these offences is either penal servitude for life, or for a minimum term of three years (54 & 55 Vict. c. 69), or imprisonment for a period not exceeding two years, with or without hard labour.

Altering the sum, for which an accountable receipt is given, is an altering in a material part, and indictable as a forgery.(c)

Where it was the practice of a bank to treat a receipt, with the depositor's name thereon, as an order for the payment of the money deposited and interest upon the receipt being presented to the bank; and a person took the receipt to the bank, and, having written the depositor's name thereon, delivered it to the bankers, who paid him the principal and interest due thereon: it was held that he was properly convicted as for a forgery of an order for the payment of money.(d)

A writing, purporting to authorise the bearer to receive money deposited in a bank by a friendly society on

(a) *Hewitt* v. *Kaye*, L. R. 6 Eq. 198. See also *In re Mead*, 15 Ch. D. 651.

(b) *In re Dillon*, 44 Ch. D. 77.

(c) *Reg.* v. *Johnston*, 5 Cox C. C. 133.

(d) *Reg.* v. *Atkinson*, Car. & M. 325.

accountable receipts, and purporting to be signed by the principal officers of the society, may be alleged, in an indictment for forgery, to be a warrant for the payment of money.(*e*)

Obtaining by False Pretences.—By 24 & 25 Vict. c. 96, s. 89, it is indictable to procure, by any false pretence, an accountable receipt to be delivered to another person for the use or benefit of the person making the false pretence.(*f*)

(*e*) *Reg.* v. *Roberts*, 2 Mood. C. C. 258.
(*f*) See *Reg.* v. *Garrett*, 23 L. J. M. C. 20.

CHAPTER XVIII.

THE RELATION OF BANKER AND CORRESPONDENT.

It frequently happens in questions of banking law that the incidence of a loss has to be determined as between two parties, who are both equally innocent of fraud, or crime, in the transaction. More especially is this the case in questions arising on dealings of a customer with his bankers, who are obliged, in order to complete the intended transaction, to employ the agency of their correspondents—other banking houses carrying on business at a distance.

Thus, if a customer employs his bankers to perform some duty for him, which can only be brought to a conclusion in some place at a distance, whether in this country or in foreign parts, so that it becomes necessary for them to employ the agency of persons acting there, and a loss ensues from the conduct of such agents, whether direct or intermediate, and the question arises whether the customer or the bankers are to bear that loss, in all such cases it is the bankers who must suffer; for, of the two, they are the parties whose conduct has led to the loss; it was they who chose the agents, or who chose the correspondents who selected the actual agents; it is their act, therefore, which has led to the occurrences which have caused the loss, and for that loss, as between themselves and the customer, they must be liable; in other words, the customer has a right of action against them, and will, in a court of law, be compensated for the injury he has sustained. The bankers, however, will have a right of recourse against their correspondents, by whose *laches* or default, either primarily or through the default of any one whom the latter may have entrusted with the business, the bankers have incurred the loss.

The following case well illustrates this position:—

A customer of a bank sent orders to his bankers to obtain for him payment of a bill of exchange, drawn by him on a person in Calcutta; the bankers accepted the employment, and wrote to him word that they had done so, promising to credit him with the amount of the bill when received. In the usual course they transmitted the bill to their correspondents in London, by whom it was forwarded to the house of A., in Calcutta, to get payment; it was paid into A.'s, immediately after which they failed. The customer having been advised, by his bankers, that the bill was paid, they were held to be his agents to obtain payment, and it was also decided that, *ipso facto*, upon payment being made, they became liable to him for the amount received; and that any loss which might arise from the conduct of the bankers' sub-agents, between whom and himself no privity was established, must fall on the bankers.(*a*) And the case was said to be not distinguishable from the case of a customer of a bank in London sending them a bill or a cheque, with orders to get payment, and their clearing-house clerk, instead of returning with the balance, absconding; in which case the bankers would clearly be liable to the customer for the amount of the bill.(*b*)

Also, the state of the accounts between the customer's bankers and any of the correspondents they may employ in the transaction can make no difference.

Hence, in all cases where a customer desires his bankers to obtain payment of a bill for him, and they do not refuse, or if a stranger makes the same request, and they agree to perform it, they are liable for the amount of the bill, whether, after remitting it to their correspondents to get the payment, its amount is returned to them or not, provided, in the latter case, the cause is the default of their correspondents.

(*a*) *Mackersy* v. *Ramsays*, 9 Cl. & F. 818; approved of in *Prince* v. *Oriental Bank*, 3 App. Cas. 324.

(*b*) Per Lord Lyndhurst, C., *ibid.* 848.

Some country bankers pay the London banker, who acts as their agent and correspondent, a fixed annual sum for conducting their agency business. Others allow a commission on the amount of the transactions during the year. There are many country bankers who pay no commission, but leave a sum of money in the hands of their London agents, in the nature of a deposit, against which they are not permitted to draw. In such cases this sum is altogether withdrawn from the general account of the country banker, and placed to another, called the deposit account.

A question arising upon a remittance through a bank may be mentioned here, as one of great practical importance. A customer of a country bank, who already had a balance in his favour on his account with them, paid in a further sum of 707*l.*, with directions in writing that 500*l.* of it was to be paid into Messrs. Robarts' bank in London to meet a bill of exchange accepted by him. The banker on the same day sent several bills to a bill broker, directing him to remit the proceeds to the London banker, and directed the London banker to meet the acceptance, but, before the bill became due, the country bank stopped payment. Now, under these circumstances, would this order of 500*l.* be available for the general creditors of the country bank, or would it remain the property of the customer at the time of the closing of the country bank? It was held to belong to the customer, inasmuch as it had been specifically appropriated by his bank for the purpose for which it had been paid in.(*a*)

But, on the other hand, where there is no specific appropriation it is otherwise: so where M. paid a sum of money into a country bankers', with written directions to apply it to meet a bill payable the next day at their London agents, and the country bankers stopped payment the next day without having advised their London agents

(*a*) *Farley* v. *Turner*, 26 L. J. Ch. 710. See also *Barkworth* v. *Ellerman*, 6 H. & N. 605.

of the payment, and the bill, on being presented, was dishonoured, as the country bankers *had made no specific appropriation of the sum*, he was only entitled to prove as a general creditor on their estate.(*b*)

Privity.—As between a banker and the customer of his correspondent there is no privity; consequently where bills are sent to a banker from his correspondent, the former takes them subject to the instructions of the correspondent and not of the correspondent's customer: so where a customer of a country bankers paid in to the bankers a sum of money in bank notes and also some bills of exchange to be remitted to London in order to meet certain acceptances, and the bankers sent to their London agents the bills and some bank notes, with a letter directing them to pay a certain sum of money, also giving them notice of the acceptances as payable at their bank, and giving directions as to other business, and the country bankers stopped payment, owing a large balance to the London bankers, it was held that, as between the country customers and the London bankers there was no appropriation of the bills and notes to meet the acceptances, and that the London bankers could retain the bills and notes without meeting the acceptances.(*c*)

Where an acceptor of a bill paid money to his bankers (at whose correspondents' house it was payable), for the purpose of taking it and other bills up, and they promised him to apply it to such purposes, and also entered the particular bill to their credit in their books, but they had not advised their correspondents to pay it, the Court held, that the drawer of the bill, who was also the holder of the bill, could not sue the bankers for the amount of the bill, as

(*b*) *In re Barned's Banking Company, Ex parte Massey*, 39 L. J. Ch. 635. See also *Thompson* v. *Simpson*, L. R. 5 Ch. 659; *Citizens Bank of Louisiana* v. *Bank of New Orleans*, L. R. 6 H. L. 352; *Ex parte Waring*, 36 L. J. Ch. 151; 19 Ves. 349; *Ex parte Smart*, L. R. 8 Ch. 220; 42 L. J. Bank. 22; *Ex parte Dewhurst*, L. R. 8 Ch. 965; 42 L. J. Bank. 47; *Chartered Bank of India* v. *Evans*, 21 L. T. 407.

(*c*) *Johnson* v. *Robarts*, L. R. 10 Ch. 505; 44 L. J. Ch. 678; 23 W. R. 763.

there was no privity between the drawer and the bankers to sustain the action.(*a*)

Duty of Correspondent.—The object of the transmission of a bill for presentation for acceptance and payment by a principal to his agent being to obtain the acceptance and the payment of the bill, or, if it is not accepted, to guard the rights of the principal against the drawer, in case recourse is to be had to the drawer, the duty of the agent must be measured by these considerations, and the duty of the agent is to obtain acceptance of the bill, if possible, but not to press unduly for acceptance, provided he obtains acceptance or a refusal within the time which will preserve the rights of the principal against the drawer.(*b*)

We may conclude by mentioning the following decision, which is one of practical utility :—A bill of exchange was sent by a bank in the United States to a bank in Toronto, Canada, for collection and remittance, accompanying which was a bill of lading for 10,000 bushels of wheat, which, on the bill of exchange being accepted by the drawees, was delivered over to them, they being the consignees named in the bill of lading : it was held, that it was not the duty of the bank in Canada, as the agent of the American bank, in the absence of special instructions, to retain the bill of lading until the bill of exchange was paid.(*c*)

(*a*) *Moore* v. *Bushell*, 27 L. J. Ex. 3.

(*b*) *Bank of Van Dieman's Land* v. *Bank of Victoria*, L. R. 3 P. C. 526 ; 40 L. J. P. C. 28.

(*c*) *Wisconsin Marine Company Bank* v. *Bank of British North America*, 10 Upper Canada, Law Journal, 151 ; it is the decision of the highest Court of Appeal in that colony.

CHAPTER XIX.

DEPOSIT OF SECURITIES FOR SPECIAL PURPOSES.

WE will next consider the rules of law which regulate the obligations and rights of bankers with respect to bills of exchange and other securities deposited with them by their customers. Questions of this nature commonly arise between the customer on the one hand, and the trustee of the bankers, upon their bankruptcy, on the other. The deposit of securities for safe custody will be considered in the next chapter.

Special Purposes.—Speaking generally, when undue bills are deposited by a customer with his banker in order that he may receive the proceeds, when the bills become due, or for any other specific purpose,(*d*) and the banker becomes bankrupt, having the bills entrusted to him remaining in specie in his hands, they do not pass to his trustee in bankruptcy, but continue the property of the customer.(*e*)

But, on the other hand, if bills of exchange are remitted

(*d*) See *Jombart* v. *Woollett*, 2 My. & C. 389.

(*e*) *Short Bills.*—The terms "short bills" and "entering bills short," are very frequently met with in cases relating to the law of bankers, being technical expressions, used amongst persons engaged in banking. It is desirable, therefore, before proceeding further, to state the meaning that is attached to the words.

When, upon the receipt from a customer of an undue bill the banker does not carry the amount directly to the former's credit as for a payment of so much cash into his account, but notes down the receipt of the bill in the customer's account, with its amount, and the time when due, in a previous column of the same page, he (the banker) is said to "enter those bills short:" *Giles* v. *Perkins*, 9 East, 12. And the bills, when so entered, are commonly said to be "short bills:" *Ex parte Pease*, 1 Rose, 232, per Lord ELDON, C. Though, as will presently appear, whether they will be considered so by the Courts, does not depend upon the particular mode in which they are entered, but upon the dealings between the parties and the circumstances. Such bills, in the absence of special agreement between the parties to the contrary, or modes of dealing from which such agreement may be inferred, are considered in the nature of a deposit. The property in them is not changed. On the bankruptcy of the banker, with them in his hands,

to the banker on the general account between him and the customer, and are not distinguished from the cash items of the account, they cannot be reclaimed by the customer from the trustee. In other words, if the relation of the customer and the banker was that of principal and agent with respect to the bills at the time of the latter's bankruptcy, the customer may recover in trover from the trustee. If the relation had passed into that of debtor and creditor at the time of the bankruptcy, then the customer has no such right of action against the trustee,(a)

This general rule, that bills deposited, or remitted, for the purpose of the banker's receiving the proceeds when due continue the property of the customer if, at the time of the bankruptcy, they remain in specie in the hands of the banker, will be applied in all cases where there has been no bargain expressed or implied between the customer and the banker, that, as soon as the bills reach the banker, the property in them shall be changed ; and such bargain

they may be recovered. Crediting the customer with their amount as cash is not sufficient to change the property : *Ex parte Dumas*, 1 Atk. 233 ; 2 Ves. sen. 582 ; *Zinck* v. *Walker*, 2 W. Bl. 1156 ; *Ex parte Atkins*, 3 M. D. & De G. 103 ; *Jombart* v. *Woollett*, 2 My. & C. 402 ; *Ex parte Barkworth*, *In re Harrison*, 2 De G. & J. 194 ; 27 L. J. Bank. 5.

In other cases, it has appeared to be the usage of some country banking houses to enter undue bills that are deposited to the credit of the customer, giving him either cash for them or liberty to draw for the amount upon the bank, the customer always indorsing the bills. The practice of London bankers is to enter as above stated. The difference between the effect of the two modes is this :—the London banker, if the customer's account is overdrawn, has a lien on the bill deposited with him, though not indorsed. The country banker, who, under this practice, always takes the bill indorsed, has not only a lien upon it, if the customer's account is overdrawn, but has also his legal remedy upon the bill by the indorsement. It is to be observed, however, that under neither system does any lien accrue to the banker until the customer's account be overdrawn. Moreover, if, at the time of the country banker's bankruptcy, the customer's balance is in his favour, he has a right to recover, *in specie*, all such bills of his as are in the banker's hands : *Giles* v. *Perkins*, 9 East, 12, 14. The presumption has been said to be that bills deposited with a banker are short bills (*Ex parte Armitstead*, 2 Glyn & J. 371).

(a) *Ex parte Oursell*, Ambler, 237 ; *Ex parte Sarjeant*, 1 Rose, 153, which are applications of the above rule of law to the several facts of those cases. The general rule is established by *Scott* v. *Surman*, Willes, 400 ; *Bolton* v. *Puller*, 1 B. & P. 539 ; *Thompson* v. *Giles*, 2 B. & C. 422 ; confirmed in *Ex parte Atkins*, 3 M. D. & De G. 103, and in *Ex parte Barkworth*, *In re Harrison*, 2 De G. & J. 194 ; 27 L. J. Bank. 5.

cannot be inferred from circumstances which fail to show any consideration for the customer's assent, as it would be unreasonable in the banker to ask, and imprudent in the customer to accede to, such terms in the absence of a consideration.(b)

In the case of *Thompson* v. *Giles*,(c) which has been fully confirmed, the course of dealing between the customer and the bank, and the usage of the banking trade throughout the county of Lancaster was shown to be in accordance with the following facts :—

The account was kept in this form in the pass-book or banking book.

A. B. (the customer), in account with C. D. (the banker).

Dr.	£	*s.*	*d.*	*Cr.*	£	*s.*	*d.*
1821.				1821			
July 4.—To Bank ...	80	0	0	July 1.—By Balance ...	1,300	0	0
„ 5.—To Draft ...	100	0	0	„ 2.—By Bills ...	750	0	0

At the end of every half-year an account was sent in to the customer from the banker. In the account of Christmas, 1821, and also in the pass-book, a bill for 689*l*. 19*s*. was included, being one of several bills paid in on the 10th of December, 1821, and it formed part of the cash balance of 941*l*. 2*s*. 5*d*. therein stated to be due to the customer.

When the customer paid bills into the bank the usage was, that (provided the banker approved of the bills) they were never written short, but entered *on the day they were paid in*, both in the pass-book and in the books of the bank, to the credit of the customer, in the form above stated; and after such entry, the customer was at liberty to draw to the full amount appearing to his credit, by cheques on the bank. Bills disapproved of

(b) *Ex parte Sarjeant*, 1 Rose, 153.
(c) 2 B. & C. 422.

were not so entered, but were sometimes returned, sometimes deposited till due. *All bills so entered, whether made specially payable to the customer or not, were indorsed by him*, or if, for any private reasons, he did not wish his name to appear on the bills, a letter was given to the bank, acknowledging himself to be equally liable as if he had indorsed. An interest account was kept, not in the pass-book, but in the books of the bank, in which the customer was debited with interest, on each cash payment to him, from the date of the payment; and on each payment in bills, from the period when the bills were due and paid; and, on the other hand, he had credit for interest from the date of each cash payment by him, and from the period when each bill paid in by him became due and was paid. As the accounts were balanced half-yearly, if a bill was paid in which did not become due before the end of the half-year, the customer was debited with the interest up to the time when the bill was due. The balance only of the interest was entered in the pass-book, and this was the usual mode of keeping an interest account.

If only the undue bills paid in by the customer were taken out of his account, in this case, as made up to the 31st of December, 1821, the customer's account would, at that date, appear to be overdrawn; but some of the payments by the banker to the customer were made in bills payable at future times, and some of them were also undue on 31st of December, 1821, and if all the undue bills on both sides had been taken out of the account, the customer would have been creditor on that account. At the period of the bankruptcy, the cash balance was in favour of the customer, exclusive of the bills in question.

It was proved to be the constant usage and course of dealing of this bank and of others in the county of Lancaster, to use bills so paid in, by paying them away to their customers as they thought fit. No direct proof was given that the customer was acquainted with this practice, and the customer never received anything from the banker

but cash, notes, and bills drawn by the banker upon his London agents.(a)

On these facts and the usage above stated it was contended, that a bargain or a contract between the customer and banker was to be inferred, to the effect that bills so deposited by the former were to become the property of the banker, upon reaching his hands. But the Court considered that, though it appeared to be the practice to carry the amount of the bills to the cash column of the account, the bills were entered, not as cash, but as bills;(b) and that, although the amount was so carried to the cash column, it did not follow that the customer assented to their being considered as cash. That merely amounted to an undertaking on the part of the bank to answer cheques in advance, to the amount of the bills so entered. By indorsing the bills paid in, or by giving a guaranty when he did not choose to indorse, the customer might enable the banker to negotiate the bills, and, in such case, a *bonâ fide* holder might have a right to retain them. But the banker could only be justified in negotiating them, when that was rendered a reasonable course, by the state of the customer's account. The custom or usage of bankers in Lancashire was stated to be, it will be observed, to use bills paid in by their customers; but it was not stated to be the usage that the bankers should so use the bills as their own, *without reference to the condition of the customer's account.*

On the whole of the case it was concluded, that there was no foundation for supposing a bargain to have been made, enabling the banker to use, as his own, bills deposited with him; and the customer recovered the bills from the assignees.

(a) *Thompson* v. *Giles*, 2 B. & C. 422. The usage of bankers was again stated to prevail in Lancashire to the above effect in *Ex parte Armistead, In re Dilworth & Co.*, 2 Glyn. & J. 379.

(b) Even if they had been entered as cash, that would have admitted of explanation: *Giles* v. *Perkins*, 9 East, 12; and the customer, even in that case, might be shown to be entitled to the bills. *Ex parte Sarjeant*, 1 Rose, 153, and per BAYLEY, J., 2 B. & C. 430.

The decision, it will be observed, is in accordance with the general position that if a customer puts bills into his banker's hands, although that gives him a right to expect that his cheques will be honoured to the amount of the bills paid in, still they remain *his* property, subject to any lien the banker may have on them, to the extent of his advances.(*a*)

This decision received judicial recognition in a comparatively recent case in bankruptcy, as being in entire conformity with reason, good sense, and common honesty.(*b*) There undue bills of exchange were from time to time remitted to his bankers by a customer and indorsed to the bankers. The course of dealing was, that the bills were not entered short, but though the bills were distinguished in the customer's account as bills, the full amounts were entered in the cash column under the dates on which the bills were paid into the bank, and the customer was at all times at liberty to draw cheques to the extent of the balance in his favour, as appearing on the account thus made out. Interest was allowed by the bankers upon the bills only from the time when their amounts were received; and it was held, in the absence of evidence of the customer's acquiescing in or authorising the bankers to treat the bills as their own from the times of their being paid in, that the bills remained the property of the customer, subject, however, to the lien of the bankers for their cash balance, and that the bankers had no right to negotiate them, unless the balance of the customer's account was in their favour; and that on the bankruptcy of the bankers, such of these bills as remained in their hands in specie did not pass to their assignees, but, subject to the lien above mentioned, belonged to the customer. "The facts," said KNIGHT BRUCE, L.J., in delivering his judgment, "are not numerous. A firm of bankers has become bankrupt, and at

(*a*) *Thompson* v. *Giles*, *supra*, per HOLROYD, J., at pp. 431, 433.
(*b*) *Ex parte Barkworth*, *In re Harrison*, 27 L. J. Bank. 5; 2 De G. & J. 194.

the time of their bankruptcy they had in their possession short bills deposited with, or otherwise furnished to, them by one of their customers. The customer then said to the bankrupts: 'I am ready to pay you the balance against me on my account, upon its being ascertained, and I will relieve you from all liability in respect of your transactions with me or with my firm; but return to us the short bills belonging to us which you hold.' To this the bankrupts, or rather their assignees, replied, 'No; the bills now belong to us, and we have a right to retain them as part of the assets, and you must come in as a creditor for the amount.' To me," said the learned judge, "it appears that this proposition is as startling as a demand by a bankrupt to retain the plate or the title deeds which a customer has deposited with him for safe custody."(c)

Bills under such circumstances do not pass to the trustee in bankruptcy of the banker, for where so held they are property clothed with a species of trust, and the same rules that are applicable to trust property apply to them.(d).

Entering Bills as Cash.—The entry as cash in the banker's books of such bills would not, of itself, change the property;(e) for a banker's books cannot be evidence for him, though they may be against him; and the assent of the customer to the bills being considered as cash, must be proved in such case; the *onus* of proving it being on the banker;(f) also, it is hard to suppose that, by entering the full amount in the cash column of the account, the banker intended to debit himself presently with the whole sum to be received in future on the bills. In order to change the property, it must be shown that the banker bought the bills, or what is in general the same thing,

(c) 27 L. J. Bank. 16.
(d) *Thompson* v. *Giles*, *supra*; *Bryson* v. *Wylie*; *Ex parte Waring*, 19 Ves. 344; *Steele* v. *Stewart*, L. R. 2 Eq. 64.
(e) *Giles* v. *Perkins*, 9 East, 12; *Hughes* v. *Spooner*, cited in 2 B. & C. 425, and confirmed, per HOLROYD, J., *ibid.* 431; *Ex parte Leeds Bank*, 1 Rose, 254.
(f) *Ex parte Sarjeant*, 1 Rose, 153.

discounted them; then the customer might have immediately sued the banker for the price which the banker had agreed to give for the bills, but still retained in his hands; and if the customer did not indorse the bills, and they were afterwards dishonoured, the banker would have no remedy against him.(*a*)

In the pass-book in the case before mentioned,(*b*) it will be observed, the bills were entered at the full amount, which does not tend to show that they were discounted; nor do the entries in the interest account tend that way. If it had been intended that the bills should become the property of the banker, they would have been entered as cash, deducting the discount.

Indorsement.—Whether a bill is to be considered as intended to be discounted or deposited, does not depend on whether it is indorsed, but on the question whether it was the intention to make an absolute transfer, giving full power to go against all parties to the bill, or merely to enable the person with whom it is deposited to receive the amount from the other parties. Indorsement, however, is *primâ facie* evidence of the former.(*c*)

Customer's Right against Transferee.—The clearly settled rule is, that, if indorsed bills are deposited with a banker, and are by him negotiated, and the banker afterwards becomes bankrupt, the original owner, who deposited them with the banker, can have no claim to recover them against the person holding them, provided such person had no notice of the deposit;(*d*) and he can only come in as a general creditor of the banker under his bankruptcy.(*e*)

(*a*) Per Holroyd, J., 2 B. & C. 431, 433.

(*b*) *Thompson* v. *Giles*, *ante*, p. 137 *et seq.*

(*c*) *Ex parte Twogood*, 19 Ves. 229; *Ex parte Schofield*, 12 Ch. D. 337. For instance, if the bill is indorsed only for the purposes of collection, the presumption of transfer would be rebutted.

(*d*) *Bolton* v. *Fuller*, 1 B. & P. 546; *Collins* v. *Martin*, 1 B. & P. 648.

(*e*) *Ex parte Pease*, 1 Rose, 238; *Ex parte Wakefield Bank*, 1 Rose, 246.

Lord ELDON more than once observed, when sitting in bankruptcy, that it ought to be generally known, that if bills indorsed are remitted to bankers, they may dispose of them effectually, though contrary to the faith of the understanding between the parties, and the remitters can only come in as general creditors on the bankruptcy.(*f*)

Loss or Destruction of Bills not due.—It follows as a consequence of the rule above stated, respecting the property in bills not due, that if by any accident they are lost or destroyed without the default of the banker, the loss does not fall upon him, but upon the customer.(*g*)

The same rule prevails where the bills are deposited for any other specific purpose, as well as that of receiving the amount when due.(*h*)

Doctrine of Ex parte Waring.—Where undue bills are held by a banker as security against his acceptances for a customer, such bills will, on the bankruptcy of the former, be ordered to be given up to the customer upon his undertaking to indemnify the bankrupt estate against any liability that may arise upon the acceptances.(*i*) If the customer also becomes bankrupt the holders of the acceptances have a right to have the bills deposited with the banker appropriated to meet the acceptances.(*k*) This rule only applies where the estates are being judicially administered.(*l*) Nor does it apply to any case in which

(*f*) *Ibid.*

(*g*) Per BEST, J., in *Thompson* v. *Giles*, 2 B. & C. 433. A similar opinion was given by the Judicial Committee of the Privy Council in *Young* v. *Bank of Bengal*, 1 Deac. 681; see *In re Leeds Bank*, 1 Rose, 254.

(*h*) *Belcher* v. *Campbell*, 8 Q. B. 11.

(*i*) *Ex parte Burton Bank*, 2 Rose, 162.

(*k*) *Ex parte Waring*, 19 Ves. 344. See also *City Bank* v. *Luckie*, L. R. 5 Ch. 773; *Ex parte Lambton*, L. R. 10 Ch. 405; *Ex parte Banner*, 2 Ch. D. 278; 45 L. J. Bank. 73; *In re New Zealand Bank*, L. R. 4 Eq. 226; *Ex parte Dewhurst*, L. R. 8 Ch. 965; 42 L. J. Bank. 87; *In re Barned Banking Company*, L. R. 10 Ch. 198; *Ex parte Arbuthnot*, 3 Ch. D. 477; *Duncan and Company* v. *New South Wales Bank*, 11 Ch. D. 88.

(*l*) *Ex parte Gomez*, L. R. 10 Ch. 639; *Ex parte General South American Company*, L. R. 10 Ch. 625.

the holders of the acceptances have not a right of double proof,(a) that is to say, against the estate both of the drawer and the acceptor.

Banker's Criminal Liability.—A banker who, in violation of good faith and without any authority, negotiates, transfers, or pledges any valuable security entrusted to him, or who in any manner converts such security to his own use is now liable to be indicted for a misdemeanour under 24 & 25 Vict. c. 96, s. 75.

Bank Post Bills.—Bank post bills are instruments used by bankers for remitting money abroad or to the country. They are payable to order and at a certain number of days after sight. When indorsed by the payee, they become payable to bearer. The principles applicable to short bills remitted to bankers that have been under consideration apply equally to bank post bills.(b)

A bank post bill had been remitted by a customer to his bankers, with a letter desiring them to place it to his credit, and to send him a receipt, and credit had been given him, in his account, for the amount of the bill, and a receipt given him in the same way as if it had been a cash payment; the bank post bill, as is mostly the case for the sake of security, when bills are sent into the country, was unaccepted. Now, in such a case, if the customer had drawn a cheque upon the bankers for a sum exceeding his balance, supposing the bank post bill, for which he had credit in the banker's books, were not reckoned, and the bankers had refused to honour the cheque, it seems probable that an action, such as it has been already shown a customer, who has an undoubted balance in his favour, may maintain in general on refusal to pay his cheque, could not have been supported; for the bankers might have answered truly, that an unaccepted bill, though of the Bank of England, payable seven days after sight, is, for

(a) *Vaughan* v. *Halliday*, L. R. 9 Ch. 561.
(b) *Ex parte Atkins*, 3 M. & De G. 105.

many purposes, not equivalent to cash; and, in fact, their duty had been performed by transmitting the paper to London for acceptance, and raising the money upon it within a reasonable time. It was held, therefore, that the bank post bill had never become vested, as property, in the bankers; and that the customer, therefore, was entitled to the proceeds as against the assignees.

Relation of Banker and Country Correspondent.—Having thus discussed the relations, rights and liabilities of customer and banker, upon the deposit of bills with the latter, it remains to notice what are the relations, in similar circumstances, when dealings between the banker in the country and his London correspondents are added to the former simple relation of banker and customer.

If a customer deposits indorsed bills with his country banker to obtain payment of them, and the banker remits them to the London bank who are his correspondents to receive and pay bills, and as such agents have an allowance from him for so doing, and then the London bank becomes bankrupt, with the bills remaining undue in their hands, the trustee, upon receiving the proceeds of the bills, must pay them over to the country bank, subject to the lien of the London bankers for anything remaining due from the country bank to them upon the contract between them. The London bankers being the paid agents of the country bank for this purpose of getting bills paid and remitting the proceeds, their power over the bills is limited to this purpose.

The same would be the case if the London banker, in the annual account between him and his correspondent in the country, there being no proof of agency, had entered the bills as the property of the correspondent. In the former case he would be considered as agent of the country banker; in the latter, there is raised an express declaration of trust.(*c*)

(*c*) *Ex parte Pease*, 1 Rose, 232; *Ex parte Wakefield Bank*, 1 Rose, 243; *Ex parte Froggart*, 3 M. & D. 322. See also *Johnson* v. *Roberts*, 10 Ch. App. 503.

Such, then, are the relations of country banker and London correspondent, in case of the bankruptcy of the latter. The result to the customer remains to be inquired into.

Now, it would manifestly be unjust that the customer should be affected by the bankruptcy of an agent whom he has no voice in selecting, or by the state of the accounts between his banker and that agent; therefore, although the country banker receives the proceeds of the bills, *minus* the sum requisite to satisfy the London banker's lien for advances (if any) and to indemnify his estate against acceptances or other engagements which he is under at the time of his bankruptcy on account of the country bank,(*a*) yet he must pay a sum equal to the whole amount of the proceeds of the bills to the customer (subject of course to the state of the latter's account); for so only can his contract with, or duty to, his customer be performed.(*b*)

When Money Paid into Bank remains the Customer's.— It has been stated that bills of exchange, remitted to a banker for the purpose of being collected when due, or otherwise clothed with a trust, do not pass to the trustee upon the bankruptcy of the banker, and in the same way money paid into a bank may, under certain circumstances, remain the property of the party paying it in.

Thus, where a person deposited, after banking hours, a large sum of money with the manager of a provincial bank, who put the money in a place by itself, separately from the funds of the bank, and the bank never after that day opened for business; Lord TENTERDEN, C.J., held that the depositor was entitled to recover the amount from the assignees.(*c*)

So, where it was the usage of a banking house, that

(*a*) *Ex parte Buchanan*, 1 Rose, 280.
(*b*) *Ibid.*; *Ex parte Rowton*, 1 Rose, 15; 17 Ves. 431; *Ex parte Burton Bank*, 2 Rose, 162.
(*c*) *Threlfal* v. *Giles*, cited 2 M. & Rob. 492.

money, paid in after banking hours, should be put into a separate place of deposit, and entered in a counter book, but not carried to the customer's account till the next day; and a customer paid in a 500*l.* Bank of England note after banking hours, and the banker (having before resolved not to re-open for business) put the note in a separate place, and the next morning stopped payment and became bankrupt, the customer was held to be entitled to recover from the assignees, the bank note being held to remain his property.(*d*)

DEPOSIT OF SECURITIES AGAINST ADVANCES.

We now purpose considering the law relating to the deposit of securities by a customer with his banker by way of security for advances made to him.

Policies of Insurance—Notice.—A policy of insurance is a thing in action within the meaning of the proviso in paragraph (iii.) of sub-section 2 of section 44 of the Bankruptcy Act of 1883; and, consequently, is exempt from the operation of the "reputed ownership" clause. A banker, therefore, who receives such an instrument by way of equitable mortgage for money advanced by him to the mortgagor, need not give notice to the office in order to protect himself against the trustees in bankruptcy of the mortgagor.(*e*)

Notice, however, should be given to guard against any subsequent mortgagee without notice gaining priority by giving notice;(*f*) and to perfect the title as against the

(*d*) *Sadler* v. *Belcher*, 2 M. & Rob. 489. See also *Ex parte Clutton*, 1 Fonb. 167, where under the circumstances money deposited after banking hours and put in a bag was held to pass to the assignees.

(*e*) *Ex parte Ibbetson*, 8 Ch. D. 519; *In re Irving*, 7 Ch. D. 419.

(*f*) *Newman* v. *Newman*, 28 Ch. D. 674; 54 L. J. Ch. 198; *Wilmot* v. *Pike*, 5 Hare, 19. Where a person lent money on a memorandum of deposit of a policy, and was told by the borrower that his policy was at home, but took no steps to verify the statement or to make further inquiries respecting it, and, as a matter of fact, the borrower had previously deposited it with another for money advanced to him, who had, however, given no notice to the company, it was held that such subsequent equitable mortgagee was charged with notice and gained no priority by the fact of himself giving notice. *Spencer* v. *Clarke*, 9 Ch. D. 137; 47 L. J. Ch. 692.

office, and so prevent it from taking a surrender of the policy,(*a*) or from paying the sum secured thereby to the assured.(*b*) Notice to the office must now be given in the manner prescribed by 30 & 31 Vict. c. 144.(*c*) This Act, however, is intended to apply only as between the insurance office and the persons interested in the policy, and does not affect the rights of those persons *inter se.* Accordingly where a first encumbrancer on a policy had given a notice, but not that prescribed by the Act, and a second encumbrancer, with notice of the prior charge, had given the statutory notice—it was held that the second encumbrancer did not thereby attain priority.(*d*)

As to whom the Notice should be sent.—The Act requires the notice to be sent to the assurance company at their principal place of business.(*e*)

Assignment of Policies.—By 30 & 31 Vict. c. 144, an assignee of a policy of insurance may sue at law in his own name, provided the necessary statutory notice has been given to the company. The date of such notice shall regulate the priority of all claims under any assignment.(*f*) S. having effected two policies upon his life for the purpose, as he expressly informed the assurance company, of enabling him to give C. a security for a debt which exceeded the amount of the policies, deposited them with C., at the same time asking him by letter to instruct his, C.'s, solicitor to prepare the necessary assignment. C., however, never took any assignment. S. died insolvent, having made a will appointing executors, but no representation was taken out to his estate. C. then gave the company notice in writing of the death, and that he held the policies as security for

(*a*) *Fortescue* v. *Barnet*, 3 M. & K. 36.
(*b*) *Jones* v. *Gibbons*, 9 Ves. 410.
(*c*) *Alletson* v. *Chichester*, L. R. 10 C. P. 319; 44 L. J. C. P. 153; and see *Newman* v. *Newman*, *supra*.
(*d*) *Newman* v. *Newman*, *supra*.
(*e*) 30 & 31 Vict. c. 144, s. 3.
(*f*) See *supra*, as to the rights *inter se* of parties claiming the policy money.

his debt, and the company acknowledged the receipt of the notice in the terms of the Policies of Assurance Act, 1867 (30 & 31 Vict. 144), s. 6. Proper evidence of S.'s death having been subsequently produced to the company, they wrote to C. that the claims under the policies would be paid at the expiration of three months, but the assent of S.'s legal personal representative would be required before settlement. After the expiration of three months, C., being unable to obtain payment, brought an action against the company insisting that S.'s deposit and letter constituted an equitable assignment of the policies within the Act, and, therefore, enabled him to give a valid discharge for the moneys. Held, that there had been no equitable assignment of the policies within the Act, and that the company were justified in refusing to pay him in the absence of S.'s legal representative. It was ordered, however, that payment of the policy moneys to the plaintiff should be made after deducting the company's costs, the legal personal representative being dispensed with under the power given to the Court by section 44 of the Chancery Amendment Act, 1852 (15 & 16 Vict. c. 86).(g) Nor does an agreement in writing to execute on request an effectual mortgage of a policy of insurance, deposited at the time of the agreement, as security for a loan constitute "an assignment" of such policy within the meaning of the Act.(h)

A condition in a policy that it should not be assignable in any case whatever does not prevent the assured from dealing with his *beneficial* interest.(i)

Shares.—Shares in an incorporated company transferable only by deed, are "things in action" within the meaning of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (iii.).

A registered shareholder in an incorporated company

(g) *Crossley and City of Glasgow Life Assurance Company*, 4 Ch. D. 421.

(h) *Spencer* v. *Clarke*, 9 Ch. D. 137; 47 L. J. Ch. 692.

(i) *In re Turcan*, 40 Ch. D. 5; 58 L. J. Ch. 101.

deposited with his bank his share certificates, together with a blank transfer executed by himself, as security for advances by the bank. Upon each certificate was a note, that in the event of sale or transmission the certificate must be surrendered with the deed of transfer, before the transfer could be registered or a new certificate issued. The Companies Clauses Consolidation (Scotland) Act, 1845, to the provisions of which this company was subject by section 12, enacts, that the certificate shall be *primâ facie* evidence of title, but that the want of the certificate shall not prevent the holder of any share from disposing thereof; and by section 14 requires the transfer of any share to be by deed. The shareholder having become bankrupt before the company received any notice of the deposit—held, that having regard to the note on the certificates, the shares were not in the possession, order, or disposition of the shareholder, under such circumstances, that he was the reputed owner thereof within the meaning of the Bankruptcy Act, 1883, s. 44 (2) (iii.). Held, also, that the shares were "things in action" within the meaning of the proviso in that sub-section.(*a*)

A banker who receives certificates of shares by way of deposit for money advanced by him should give notice of his equitable mortgage to the company, so as to protect himself against subsequent encumbrancers; though the fact of his possessing the certificates would in most cases charge the subsequent purchasers with notice.(*b*) Section 30 of the Companies Act, 1862, forbidding notice of

(*a*) *The Colonial Bank* v. *Whinney*, 11 App. Cas. 427; 56 L. J. Q. B. 43. Lord FITZGERALD, in *Bradford Banking Company* v. *Briggs*, 12 App. Cas. 39, said, referring to this case: "The House lately gave large effect to the possession of the certificates of shares in the *Colonial Bank* v. *Whinney*, in holding that where the shareholder pledged the certificates of his shares to the bank as a security for advances, though no notice of the pledge had been given to the company, yet that by the pledge of the certificates, the shares ceased to be in his order and disposition, and did not pass to his assignees in bankruptcy, although his name remained on the register as the registered shareholder." See also *Société Générale* v. *Walker*, 11 App. Cas. 20; *Williams* v. *Colonial Bank*, 38 Ch. D. 388; 57 L. J. Ch. 126; *Colonial Bank* v. *Cady*, 12 App. Cas. 267.

(*b*) See *Spencer* v. *Clarke*, *supra*; *Cumming* v. *Prescott*, 2 Y. & C. 485.

any trust to be entered on the register, does not prevent an equitable mortgagee from thus affecting the company with knowledge of his charge.(c)

Notice of the mortgage should be in writing, but a written notice is not absolutely necessary.(d) Notice to a director or secretary of the company is, as a general rule, notice to the company.(e)

A trustee of shares does not by making an equitable mortgage of them defeat his *cestui que trust's* title, unless the *cestui que trust* has by his conduct estopped himself from claiming to recover them ; but the trustee may defeat it by making a legal transfer of the shares to a person who has no notice of any prior equity—for when the equities are equal the legal estate must prevail.(f) But before the *cestui que trust's* rights can be thus defeated there must have been a complete legal transfer of the shares to the transferee.

In the recent case of *Powell* v. *London and Provincial Bank*(g) the facts were as follows :—

The sole executor and residuary legatee of the surviving trustee of a marriage settlement was the registered holder of a sum of stock of a company regulated by the Companies Clauses Consolidation Act, 1845, which was part of the trust fund. He deposited with a bank as security for an advance the stock certificate, a loan note undertaking to execute a proper assignment when required, and a blank transfer executed by himself. This transfer was not stamped, and was expressed to be in consideration of 5*s.* The bank, who had no notice of the trust, subsequently inserted their own name in the blank transfer and executed it ; but the deed was not re-delivered by the borrower, nor executed in his presence, nor by his authority under

(c) *Ex parte Stewart*, 4 De G. J. & S. 543; *Bradford Banking Company* v. *Briggs*, 12 App. Cas. 29; *Roots* v. *Williamson*, 38 Ch. D. 485.

(d) *Ex parte Richardson*, My. & C. 43.

(e) *Allstson* v. *Chichester*, L. R. 10 C. P. 319; *Ex parte Harrison*, 3 M. & A. 50.

(f) *Shropshire Union Railway Company* v. *Reg.*, L. R. 7 H. L. 496.

(g) [1893], 2 Ch. 555.

seal. The transfer was duly registered by the company, of which the bank informed the borrower. Held, that the transfer was not the deed of the borrower and did not pass the legal title to the stock; and, therefore, although the bank was not affected with notice of the breach of trust, their title must be postponed to the prior equitable title of the persons interested under the trust.

The Court, however, appeared to think that the blank transfer not being stamped and not stating the true consideration would not of itself have invalidated the deed, the provisions on that subject in the Act being merely directory.

Lord Justice LINDLEY, in giving judgment in this case, and after referring to the necessity of the transfer having to be by deed duly executed, though the mere mis-statement of the consideration or erroneous stamp would not invalidate it, said:—"But that it should be a deed is by the Act of Parliament essential, and in order to acquire the legal title to stock or shares in companies governed by the Companies Clauses Consolidation Act, 1845, you must have a deed executed by the transferor, and you must have that transfer registered. Until you have got *both* you have not got the legal title in the transferee. Now what took place here, was this: Mr. Edwards (the trustee) gave to the bank a transfer sealed by him, and, so far as form goes, probably delivered by him to the bank, but with blanks. It was not in a complete form. It was never in that form in which such an instrument, however much wax there might be at the bottom, could amount to a deed by the transferor. We all know that both at common law and under these statutes if you execute a transfer in blank, that instrument with the blanks is not a deed. Then what happened was this. That document so executed by Edwards in blank was filled up afterwards by the bank, probably as was intended, and the bank itself was put in as the transferee, and the bank got itself registered. . . . Now, stopping there for a moment, what was the effect of what

had been done? It was not that the bank got a good title. The registration of the stock in the bank, unless preceded by a valid deed transferring the stock from the owner of it, does not give the transferee a good title at all.(a) We have not to consider the effect of documents executed in blank as agreements enforceable in equity. We have nothing to do with that, but we are considering the legal title of the bank. The bank had no legal title at all."

The deed of settlement under which a company was formed provided (1) that no person claiming to be the proprietor of any share by transfer should be treated as such unless and until he should have been registered in the register of shareholders as the proprietor of such share; (2) that no person should be entitled to be registered as the proprietor of any share unless and until by execution of the deed of settlement, or some deed referring thereto, he should have undertaken all the obligations of a shareholder; and(3) that every transfer should be effected by deed which, when executed, should be deposited or left at the office of the company.

The plaintiff, a married woman living apart from her husband, purchased shares in the company with moneys forming part of her separate estate, and such shares were transferred to and registered in the name of W., who held them as trustee for her for her separate use.

W., being indebted to the defendants, as a security for his debt, deposited with them the certificates, and executed to them a transfer of the shares. The deed of transfer did not refer to the deed of settlement, and the defendants sent it (along with the certificates) to the office of the company for registration, but did not execute or offer to execute the deed of settlement. The company having received notice that the plaintiff claimed the beneficial ownership of the shares did not proceed to register the transfer.

(a) See *France* v. *Clark*, 26 Ch. D. 263.

In an action by the plaintiff to establish her title to the shares—held, that the defendants had neither a complete legal title to the shares, nor as between themselves and the company an unconditional right to be registered as shareholders in the place of W., and that their title being inchoate only, was insufficient to defeat the pre-existing equitable title of the plaintiff.(*a*)

The following propositions are stated by Mr. Justice STIRLING, in the above case, as being sanctioned by the House of Lords in the *Societé Générale de Paris* v. *Walker* :—(*b*)

1. A merely inchoate title by an unregistered transfer is not equivalent for the purpose of defeating a pre-existing equitable title to a legal estate in the shares.

2. The title by transfer is to be deemed inchoate only (within the meaning of the last proposition) until (at the earliest) all necessary conditions have been fulfilled to give the transferee, as between himself and the company, a present, absolute, and unconditional right to have the transfer registered.

3. A company which, before a transfer had ceased to confer an inchoate title, only receives notice of a prior equitable title is not necessarily bound to act upon such transfer so as to effectuate a fraud till then incomplete.

Where the owner of shares borrows money and deposits with the lender certificates of his shares and also transfers thereof signed by him, but with the date and name of the transferee left blank, the lender has implied power to fill up the blanks, and the transfers will pass the legal interest if the articles of association do not require a deed otherwise only an equitable interest.(*c*)

(*a*) *Roots* v. *Williamson*, 38 Ch. D. 485.
(*b*) 11 App. Cas. 26.
(*c*) *In re Tahiti Cotton Company*, L. R. 17 Eq. 273; *France* v. *Clark*, 26 Ch. D. 257; *Williams* v. *Colonial Bank*, 38 Ch. D. 395; *Société Générale de Paris*, 11 App. Cas. 20; *Powell* v. *London and Provincial Bank* [1893], 2 Ch. 555.

Notice.—But, as has been stated, the title of the legal owner will only prevail as against a prior equitable encumbrance, provided he had no notice of such encumbrance.(*d*).

In the *Bank of Montreal* v. *Sweeney*(*e*) it was held that where a trustee deposited the share she held in trust with his bankers for the purpose of securing a private debt of his own and the bank had notice of the existence of a trust, though the *cestui que trust* was not disclosed, they could not retain the shares as against the *cestui que trust.*

In order that the title of the legal estate should prevail as against a prior equitable title the legal owner must show that he neither had notice of the infirmity of the pledgor's title, nor of such facts and matters as made it reasonable that inquiry should be made into such title.(*f*)

S. gave E. certificates of railway stock with transfers thereof executed by him in blank, and bonds of foreign companies (alleged to be negotiable securities) for the purpose of raising 26,000*l.* E. gave these securities to M., a money dealer in London, to secure 26,000*l.* advanced by M. to E. M. deposited the transfers and other securities, together with other securities of his customers, with various banks as security for large loan accounts running between him and them, the blanks in the transfers of stock being filled up with the names of nominees of the banks. The banks in so dealing *either actually knew or had reason to believe* that the securities did or might belong not to M., but to his customers. M. having become bankrupt, the bank sold some of S.'s securities and claimed to hold the proceeds and the unsold remainder as security for *all* the debts due from him to them. Held, that though the banks had the *legal title* to the securities they were not purchasers

(*d*) See *ante*, p. 151, and further, *Goodwin* v. *Roberts*, 1 App. Cas. 476; *Moore* v. *North Western Bank*, 64 L. T. R. 456; *Hone* v. *Boyle*, 27 L. R. Ir. Ch. 137; 56 L. T. R. 897.

(*e*) 56 L. T. R. 897.

(*f*) Per Lord BRAMWELL in *The Earl of Sheffield* v. *London Joint Stock Bank*, 13 App. Cas. 333; 57 L. J. Ch. 986.

for value *without notice*, but ought to have inquired into the extent of M.'s authority and otherwise, whether the securities were negotiable or not; and that upon payment to the banks of the money advanced by M. to E., S. was entitled to the value of such of the securities as had been sold by the banks and to redeem the remainder.(*a*)

It will be observed on perusing the judgment in this case that the above decision was arrived at on the ground that the bank *knew or must be taken to have known that* M. was exceeding his rights, which he possessed in relation to the securities, in purporting to pledge them for the sum he did; and, therefore, that it would be contrary to good faith for the bank to retain them for anything beyond the sum for which he could legitimately pledge them; and that as regards the excess, the bank though holders for value were not holders of the securities in good faith. It will thus be seen that the judgment which certainly did not purport to be a new departure, or to lay down any principle of law differing from that already established, turned entirely upon the view taken of the facts.(*b*)

A broker was in the habit of pledging his customer's securities *en bloc* with the appellant bank as security for advances to himself. Among these were mortgage bonds belonging to the respondents, which were transferable by delivery. The bankers had no notice, and no reason to suspect, that the broker had no right to pledge these bonds for his own purposes. The broker failed and absconded. Held, reversing the decision of the Court of Appeal, that the bankers, having acted in good faith, and without notice of the broker's fraud, were entitled to retain and realise

(*a*) *Earl of Sheffield* v. *Joint Stock Bank*, 13 App. Cas. 333. Discussed in *London Joint Stock Bank* v. *Simmons*, *post*: and *Bentinck* v. *London Joint Stock Bank*, *post*. See also *Baker* v. *Nottingham Bank*, 60 L. J. Q. B. 542; *Merton* v. *City Bank*, 8 L. T. R. 86.

(*b*) See the judgment of Lord HERSCHELL in *London Joint Stock Bank* v. *Simmonds* [1892], A. C. 201; 61 L. J. Ch. 732. As to the deposit of negotiable instruments, see *post*.

the bonds to repay themselves the money due by the broker.(c)

In the still more recent case of *Bentinck* v. *London Joint Stock Bank*,(d) the facts were as follows :—

Stockbrokers were employed by a client to make for him from time to time on the London Stock Exchange speculative purchases and sales of stock, shares, and bonds. The brokers furnished him with money to enable him to pay for the purchases, and he authorised them to hold the purchased stocks, shares, and bonds, as security for their advances, and also to repledge them.

The brokers had a loan account with their banker, with whom they deposited stock, shares, and bonds belonging to various clients *en bloc*, as security for the banker's advances. The bank allowed the brokers to withdraw the deposited securities from time to time, as they required them, upon their depositing others of equal value. Ultimately the brokers became defaulters on the Stock Exchange, and were adjudicated bankrupts. At the date of the default there were in the hands of the bank various stocks and shares, and also some bonds payable to bearer, which the brokers had purchased for the client. The stocks and shares were transferable by deed in the ordinary way, and they had all been transferred to, and were registered in, the names of the trustees of the bank. Some of the transfers were made by the client himself, some by the brokers, and some by third parties.

Those which were made by the client were expressed to be for a nominal consideration, and others were expressed to be for full value. The bonds passed by delivery on the Stock Exchange, and were always treated as negotiable.

The client claimed to be entitled to redeem the securities on paying to the bank the amount which was due from

(c) *London Joint Stock Bank* v. *Simmons* [1892], A. C. 201; 61 L. J. Ch. 723.

(d) [1893], 2 Ch. 121.

himself to the brokers; the bank claimed to hold the securities till payment of a larger amount which was due to them from the brokers. The client asserted that the authority which he had given to the brokers to re-pledge his securities authorised them to do so only for an amount not exceeding what was due from himself to them.

There was evidence that the majority of transactions on the Stock Exchange, when the purchaser of securities does not pay for them at once, is carried on upon a system known as "contango" or "continuation," under which the person who provides the purchase money becomes the owner of the purchased stock or shares, he entering into a contemporaneous contract with the purchaser to sell to him at a future day (generally the next "account day" on the Stock Exchange) an equal amount of similar stock or shares at the original price, increased by a charge called the "contango."

Held, upon the evidence, especially with regard to that relating to the "contango" system, that there was nothing to lead the bank to suppose that the stocks and shares which were transferred to their trustees were not the brokers' own property; and that the bank must, therefore, be treated as *bonâ fide* holders for value without notice, and their legal title could not be impeached; and that, consequently, the client could not redeem without paying the amount which was due from the brokers to the bank.

Held, also, that as to the stocks and shares of which the client had himself executed transfers, he was estopped from denying that the brokers had authority to pledge them to the bank for their full value.

Held, also, that the bonds were negotiable securities, and that as to them the case was governed by *London Joint Stock Bank* v. *Simmons*,(*a*) and that the client could not redeem without paying for the amount due from the brokers to the bank. It being admitted that the amount

(*a*) [1892], A. C. 201.

due to the bank exceeded the value of the client's securities, an account was not asked for.

Scrip Certificate.—A scrip certificate is an acknowledgment by a company or its projectors that the person named thereon (or more commonly called the owner) is *entitled* to a certain specified number of shares in the undertaking.(*b*) This certificate is generally given to an applicant allottee, upon payment of the amount due on the allotment, and is afterwards exchanged for a share certificate, upon completion of the payments. Until this exchange has been made, the applicant is not usually a shareholder, but merely possesses a right to become so, and to transfer that right to another.(*c*) Scrip certificates, when proved by custom to pass by delivery, cannot be recovered back from a *bonâ fide* holder for value who has obtained them from a person in whom no title vested.(*d*) These certificates must bear a penny stamp. See schedule to Stamp Act, 1891 (54 & 55 Vict. c. 39).

Title Deeds.—A deposit of title deeds, as a security for a debt, will, without more, create in equity a charge upon the property ;(*e*) but where it is accompanied by a written document the terms of that document must be referred to in order to ascertain the exact nature of that charge.(*f*) On the other hand a mere oral agreement to deposit title deeds does not constitute an equitable mortgage.(*g*)

(*b*) Lindley on "Partnership" (5th edit.), p. 65.
(*c*) *Eustace* v. *Dublin Trunk Railway*, L. R. 6 Eq. 182.
(*d*) *Goodwin* v. *Robarts*, L. R. 1 App. Cas. 476 ; 45 L. J. Ex. 748 ; 24 W. R. 987. In *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194, where the scrip was that of a banking company, the mercantile usage was proved.
(*e*) When the title to land has been registered under the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 81, the land certificate and not the deeds should be deposited under the Registration Act relating to Yorkshire, a mere deposit of title deeds necessitates a registration of a memorandum of such charge, see 47 & 48 Vict. c. 54, s. 7 ; but in other registration counties, a mere deposit of title deeds without any memorandum does not require registration. See *Sumpter* v. *Cooper*, 2 B. & Ad. 223 ; *Kettlewell* v. *Watson*, 26 Ch. D. 501.
(*f*) *Shaw* v. *Foster*, L. R. 5 H. L. 321 ; 42 L. J. Ch. 49.
(*g*) *Ex parte Coombe*, 4 Madd. 249 ; *Ex parte Broderick*, 18 Q. B. D. 765.

It is not necessary, for the purpose of effecting an equitable mortgage, that *all* the title deeds relating to the estate should be deposited, provided real and material portions of them are deposited.(*a*)

An agreement to give a mortgage, and the delivery of title deeds for the purpose of having the agreement carried into effect, will constitute an equitable mortgage.(*b*)

The prudence and propriety, with a view of preventing disputes and removing all ground for question and litigation, of always taking a memorandum of the object and purpose for which the deposit was made, have been pointed out, and numerous instances have occurred in which much delay in realizing the securities would have been saved to bankers if their advisers had been duly alive to these considerations. For instance, it has been laid down, that where there is no memorandum, an equitable mortgage so created will *primâ facie* be considered only as a security for a debt then due.(*c*) A deposit may, of course, be made to cover future advances and such an intention can be proved by parol evidence.(*d*)

When title deeds are deposited by way of equitable mortgage, and a memorandum merely states the purpose for which they are deposited, it is not an agreement for a mortgage, and does not require to be stamped.(*e*)

Fixtures. An equitable mortgage by deposit of title deeds will extend to any interest the mortgagor may acquire in the property,(*f*) and will also include fixtures both existing on the premises at the time of creating the mortgage and any that may become subsequently annexed thereto; and whether the deeds relate to leasehold or freehold property.(*g*)

(*a*) *Lacon* v. *Allen*, 26 L. J. Ch. 18.
(*b*) *Hockley* v. *Bantock*, 1 Russ. 141; *Keys* v. *Williams*, 3 Y. & C. 55.
(*c*) *Ex parte Whitbread*, 19 Ves. 209; *Ex parte Mountfort*, 14 Ves. 606.
(*d*) *Ex parte Mountfort*, *supra*; *Ex parte Hooper*, 1 Mer. 7.
(*e*) *Meek* v. *Bayliss*, 31 L. J. Ch. 448.
(*f*) *Pryce* v. *Bury*, L. R. 16 Eq. 153; *Ex parte Farley*, 1 M. D. & D. 653.
(*g*) *Longbottom* v. *Perry*, L. R. 5 Q. B. 123; *Ex parte Astbury*, 4 Ch. App. 630; *Sheffield Building Society* v. *Harrison*, 15 Q. B. D. 358;

But where a mortgagor in possession lets the property to a tenant who brings on to it certain trade fixtures, the fixtures do not pass under the mortgage, but remain the property of the tenant.(*h*) Nor does the right of a mortgagee to fixtures attached to the mortgage property, affect the right of a third person to unfix and carry away a chattel of his own which he has fixed at the request of a mortgagor in possesssion for the purpose of enabling him to carry on his trade.

By agreement between the defendants and E., who was tenant for a term of years of a piece of land, the defendants agreed to supply him with a boiler for the purpose of his trade, to be paid for by instalments and to remain the property of the defendants till all the instalments were paid; and it was further agreed that in case of default of payment of any of the instalments the defendants might enter and carry away the boiler. E. then mortgaged his interest in the land by underlease to the plaintiff, who had no notice of the agreement, and who allowed E. to remain in possession. The defendants afterwards supplied the boiler, which was fixed in the land. One of the instalments not being paid, the defendants entered and carried the boiler away. In an action by the plaintiff against the defendants for removing the boiler:—Held, that the plaintiff, having allowed the mortgagor to remain in possession, must be taken to have acquiesced in his making agreements for fixing and removing fixtures for the purposes of his trade, and that he could not claim the boiler as against the defendants.(*i*)

The difficulty that arises is in deciding what constitutes a *fixture* as a matter of fact. The following case may be

Tebb v. *Hodge*, L. R. 5 C. P. 73; *Meux* v. *Jacobs*, L. R. 7 H. L. 481; *Sheffield Building Society* v. *Harrison*, 15 Q. B. D. 358; *Re Lloyd's Banking Company*, L. R. 4 Ch. 634.

(*h*) *Sanders* v. *Davis*, 15 Q. B. D. 218.

(*i*) *Gough* v. *Wood* [1894], 1 Q. B. 713; *Cumberland Union Banking Company* v. *Maryport Iron Company* [1892], 1 Ch. 415.

useful as showing the principle that has been adopted for the decision of such questions :—

The owner in fee in possession of land and premises deposited the title deeds with a banking company, as an equitable mortgage to secure the balance of his account with them for the time being. He then erected a mill, and set up, not only steam power applicable to all mills, but machinery applicable only to the purposes of a particular manufacture which he carried on there. He afterwards granted a bill of sale of all the machinery, the assignee having notice of the previous deposit of the deeds. Held, as between the mortgagees and the assignee, that all of the machinery which was annexed to the floor, ceilings, or sides of the building in a quasi permanent manner by means of bolts and screws passed to the mortgagees ; and that it made no difference that the object of annexation was merely to steady the machines when in use, and that they could be removed without any injury to them or the freehold ; nor that the machines were in the nature of trade fixtures, which would, as between landlord and tenant, belong to the tenant.(*a*)

Again, in *Holland* v. *Hodgson*,(*b*) it was held that an article affixed to the soil by the owner of the fee, though only by the means of bolts and screws, was to be considered as part of the land ; at all events, where the object of setting up the article is to enhance the value of the premises to which it is annexed for the purposes to which those premises are applied.(*c*)

Fixtures are not within the doctrine of " reputed ownership," and for the purpose it is immaterial whether the mortgage is a legal or equitable one.(*d*)

An equitable mortgagee by deposit of a lease is not bound, *at the suit of the lessor*, to take a legal assignment

(*a*) *Longbottom* v. *Berry*, L. R. 5 Q. B. 123 ; 39 L. J. Q. B. 39.
(*b*) L. R. 7 C. P. 328.
(*c*) See also *Tebb* v. *Hodge*, *ante*, and *Meux* v. *Jacobs*, *ante* ; *Ex parte Moore's Company*, 14 Ch. D. 379 ; *Reg.* v. *Inhabitants of the Parish of Lee*, L. R. 1 Q. B. 241 ; *Langton* v. *Horton*, 1 Hare, 549.
(*d*) See *Mather* v. *Fraser*, 2 K. & J. 536 ; *Tebb* v. *Hodge*, *ante*.

of the lease, nor is he liable to the covenants of the lease ;(*e*) for there is no privity between him and the lessor until he has made himself legal assignee ; and so to hold "would effectually prevent anybody from ever taking a deposit of a lease as a security for a sum of money ; for no man in his senses would take a deposit of a lease if he were thereby to render himself liable to the covenants of the lease."(*e*)

Prior to the Conveyancing Act, 1881, the proper remedy of an equitable mortgagee by deposit seems to have been by foreclosure, unless it was otherwise agreed.(*f*) By section 25 of the above Act the Court may now order a sale.(*g*)

If the banker, having such equitable mortgage by deposit of the title deeds of an estate in fee, enters into the receipt of the rents of the mortgaged estate, such receipt amounts to a payment, *primâ facie*, either of the principal or interest of the debt, as the case may be, so as to take the case out of the Statutes of Limitations.(*h*)

It is to be borne in mind, however, that if a banker, being equitable mortgagee of land, takes upon him to assume the right of taking possession, without applying to a Court of equity for leave or directions to do so, and unreasonably and unnecessarily, for the purpose of defending any right given him by his mortgage, defends an action brought against him in consequence of his so acting, and

(*e*) *Moore* v. *Greg*, 2 Ph. 717 ; *Cox* v. *Bishop*, 26 L. J. Ch. 389. See *Wright* v. *Pitt*, L. R. 12 Eq. 408 ; 40 L. J. Ch. 558.

(*f*) *James* v. *James*, L. R. 16 Eq. 153 ; *Samble* v. *Wilson*, 5 N. R. 395 ; *Backhouse* v. *Charlton*, 8 Ch. D. 444.

(*g*) See 44 & 45 Vict. c. 41, s. 25 ; and see *Wade* v. *Wilson*, 22 Ch. D. 235, for the form of order made in favour of a mortgagee by deposit. For form of decree for foreclosure, see *Lees* v. *Fisher*, 22 Ch. D. 283.

(*h*) 3 & 4 Will. 4, c. 27 ; 7 Will. 4 ; 1 Vict. c. 28 ; and 37 & 38 Vict. c. 57 ; *Brocklehurst* v. *Jessop*, 7 Sim. 438. See *Fordham* v. *Wallis*, 10 Hare, 228. Such a payment, however, within the meaning of 1 Vict. c. 28, so as to take the case out of section 2, must be a payment of principal or interest by the mortgagor or his agent, or some person bound to pay on his behalf. The payment of rent by the tenant is not such a payment on behalf of the mortgagor. *Chinnery* v. *Evans*, 11 H. L. C. 115 ; *Harlock* v. *Ashberry*, 19 Ch. D. 539 ; 51 L. J. Ch. 394 ; *Cockburn* v. *Edwards*, 18 Ch. D. 449.

is unsuccessful in his defence, he will not be allowed the costs out of the mortgaged estate.(a)

In reference to questions respecting a freehold or leasehold security, it may be well to point out, that the deposit of the lease of a house, or deeds of conveyance of a house and furniture to the depositor, does not, by any means, necessarily extend to charge the furniture in the house.

Thus, where A. deposited with B., as security for a debt, certain deeds, by which a freehold house at Bognor and the furniture therein were conveyed and assigned to A., and the memorandum of deposit was as follows:—"Herewith I hand you the title deeds of my Bognor estate, to be held by you, &c.;" these words were decided not to extend to the furniture, which, under them, did not pass to B., nor did any interest in the furniture. If it had been the intention that the furniture should be included in the security, B. ought to have taken care that A. so expressed his memorandum of deposit as to include the furniture, and that a schedule was added enumerating the different articles.(b)

It seems, however, that, when a lease of a house engaged in trade is deposited as an equitable mortgage, the depositee is entitled to the whole of the price, on the sale of the lease or goodwill of the business whether it is considered to arise from the goodwill, or from the value of the lease independently of the goodwill.(c)

A written agreement for a lease in which the lessee undertakes to put up fixtures of a given value, and the lessor to grant a lease of, and to lend a sum on, the premises as fitted, creates an equitable mortgage.(d)

When the deposited documents are title deeds which have been deposited with the customer by a third party, with a written memorandum of the object of their deposit

(a) *Dryden* v. *Frost*, 3 My. & C. 670; *Lomax* v. *Hyde*, 2 Vern. 185.
(b) *Ex parte Hunt*, 1 M. D. & De G. 139.
(c) *Chissum* v. *Dewes*, 5 Russ. 29. See *Steuart* v. *Gladstone*, 10 Ch. D. 626; *Levy* v. *Walker*, *ibid.* 436; *Pile* v. *Pile*, 3 Ch. D. 36.
(d) *Tebb* v. *Hodge*, L. R. 5 C. P. 73.

with him, it is not necessary, to constitute a valid and equitable sub-mortgage to a banker, that the original memorandum should also be deposited.(e)

Priorities.—It is now settled that if bankers take a mortgage to secure a specific sum and future advances, and the mortgagor makes a second mortgage to A. in a similar form with notice of the prior mortgage, they will not be entitled to priority for further advances made after notice of the mortgage to A.(f)

The owner of land, after depositing the title deeds with a bank as security for all sums then or thereafter to become due on the general balance of his account with the bank, contracted with the knowledge of the bank to sell the land to one who had notice of the terms of the deposit. The vendor afterwards paid into his own account at the bank sums which in the whole exceeded the debt due to the bank on his balance at the time of the contract of sale, so that on the principle of *Clayton's Case*(g), that debt was discharged. The bank, without giving notice to the purchaser, continued the account and made fresh advances to the vendor, so that on the general balance there was always a debt to the bank. The purchaser, who never had notice of the fresh advances, paid the purchase money by instalments to the vendor :—Held, that, on the principle of the above case, the bank had no charge on the land as against the purchaser for the fresh advances, nor upon the purchase money.(h) In giving judgment, Lord BLACKBURN said : "This raises the question, whether anyone purchasing land, with notice that the title deeds have been deposited with a bank, is bound to enquire whether the bank has, after receiving notice of this purchase, made fresh advances

(e) *Ex parte Smith*, 2 M. D. & De G. 587 ; *Ex parte Farley*, 1 M. D. & De G. 683.

(f) *Hopkinson* v. *Rolt*, 9 H. L. Cas. 541 ; 28 L. J. Ch. 41. See *Menzies* v. *Lightfoot*, L. R. 11 Eq. 459.

(g) 1 Mer. 585.

(h) *London and County Banking Company* v. *Ratcliffe*, 6 App. Cas. 722.

on the security of the unpaid vendor's lien; or whether the burden does not lie on the bank, advancing on the security of the unpaid vendor's lien, to give notice to the purchaser that it has so done, or intends so to do. No case was cited in which any such point had been discussed; but I think both convenience and principle strongly point to the burden of giving notice lying on the bank, and not on the purchaser, whose enquiries might often be annoying and impertinent."(a)

A banking house, in consideration of an existing debt, and of a further advance of money to a customer, obtained from him a deposit of all the title deeds of certain freehold and copyhold lands of which he was seised, with a written memorandum signed by him, regularly charging the lands with payment of the whole debt and interest. Other creditors subsequently recovered judgment against him, and, under 1 & 2 Vict. c. 110, s. 13, sued out *elegits*, under which the sheriff delivered to them the whole of the land. The bankers, having filed a bill in Chancery, praying that they might be declared to have an equitable mortgage upon the land, and to be entitled to priority over the *elegits* and judgments, had their prayer granted, *there having been no laches on their part*, and their title being perfected before the judgments were recovered.(b)

The bankers, it may be observed, having perfected their title as equitable mortgagees, must have been preferred to the judgment creditors in this case, independently of the statute.(b)

A banker's equitable mortgage will not prevail against that of a prior equitable mortgagee unless the latter has been guilty of negligence,(c) because where the equities are equal priority in time prevails. An equitable mortgagee, who has advanced his money, without notice of a

(a) *London and County Banking Company* v. *Ratcliffe*, 6 App. Cas. 739.
(b) *Whitworth* v. *Gaugain*, 3 Hare, 416; affirmed, 1 Ph. 728, and adopted, *Watts* v. *Porter*, 3 El. & Bl. 743.
(c) *Humber* v. *Richards*, 45 Ch. D. 589; *Dixon* v. *Muckleston*, L. R. 8 Ch. 155; *Bradley* v. *Riches*, 9 Ch. D. 189; 39 L. T. 78; *National Provincial Bank* v. *Jackson*, 33 Ch. D. 1.

prior equitable mortgage, may gain priority by getting in the legal estate, unless the circumstances are such as to make it inequitable for him to do so, as would be the case, for instance, if the legal estate were held upon express trusts. The mere fact that the subsequent encumbrancer has notice of the prior encumbrance when he gets in the legal estate counts for nothing.(*d*) This proceeds on the doctrine that when the equities are equal, the legal estate prevails.(*e*) For the same reason it follows that the equitable estate created by a deposit of securities will not prevail as against a prior legal estate. But the Court will postpone the prior legal estate to a subsequent equitable estate; (i.) where the owner of the legal estate has assisted in or connived at the fraud which has led to the creation of a subsequent equitable estate, without notice of the prior legal estate, of which assistance or connivance, the omission to use ordinary care in inquiring after or keeping the title deeds may be, and in some cases has been, held to be, sufficient evidence, where such conduct cannot otherwise be explained; (ii.) where the owner of the legal estate has constituted the mortgagor his agent with authority to raise money, and the estate thus created has by the fraud or misconduct of the agent been represented as being the first estate.

But the Court will not postpone the prior legal estate to the subsequent equitable estate on the ground of any mere carelessness or want of prudence on the part of the legal owner.(*f*)

Notice of Paying Off.—An equitable mortgagee by deposit of title deeds of land, accompanied by a memo-

(*d*) *Taylor* v. *Russell* [1892], A. C. 244; 61 L. J. Ch. 657.
(*e*) *Hiern* v. *Mill*, 13 Ves. 114; *Young* v. *Young*, L. R. 3 Eq. 801; *Agra Bank* v. *Barry*, L. R. 7 H. L. 135; *Pilcher* v. *Rawlins*, L. R. 7 Ch. 259; *Lee* v. *Clutton*, 45 L. J. Ch. 43.
(*f*) *Northern Counties of England Fire Insurance Company* v. *Whipp*, 26 Ch. D. 482; *Lloyd's Bank* v. *Jones*, 29 Ch. D. 221; *National Provincial Bank* v. *Jackson*, 33 Ch. D. 1; *Jones* v. *Ingham* [1893], 1 Ch. 352; *Kettlewell* v. *Watson*, 21 Ch. D. 685; *Briggs* v. *Jones*, L. R. 10 Eq. 92.

randum of deposit, is not entitled to six months' notice before he is bound to accept a tender of the amount due, nor to six months' interest in lieu of notice, the inference from the form which the transaction takes being that the loan is merely temporary.(a)

Equitable Mortgage by Company.—A trading company has general power to borrow money to an extent which is reasonable and necessary for the purposes of its business.(b)

The deed of settlement of an insurance company contained no express power of borrowing, but empowered the directors to do and execute all acts, deeds and things necessary for carrying on the concerns and business of the company and to bind the company, as if the same were done by the express consent of the whole body of members thereof:—Held, that the directors acted within their powers in borrowing money from the bankers of the company to meet pressing demands upon the company.(c)

In this implied power of borrowing, incidental to a trading company, is included the power of making an equitable mortgage by deposit of title deeds, unless there is something in the company's articles to prohibit such a charge being made, and such a security may be given for a past, as well as for a future debt.(d)

The articles of association provided that a company might, with the sanction of a general meeting, borrow money not exceeding in amount the one-half of the nominal capital upon mortgage. The nominal capital of the company was 100,000*l*. The company passed a resolution authorising a mortgage to the extent of one-third of the

(a) *Fitzgerald's Trustees* v. *Mellersh* [1892], 1 Ch. 385.

(b) *In re Hamilton's Windsor Iron Works, Ex parte Pitman*, 12 Ch. D. 712; *English Channel Steamship Company* v. *Rolt*, 17 Ch. D. 715; *Baroness Wenlock* v. *River Dee Company*, 10 App. Cas. 359; *General Auction Estate Company* v. *Smith* [1891], 3 Ch. 432; and see as to the borrowing powers of companies generally, *Baroness Wenlock* v. *River Dee Company*, 10 App. Cas. 359; *Ashbury Company* v. *Riche*, L. R. 7 H. L. 653.

(c) *Gibbs and West Case*, L. R. 10 Eq. 381.

(d) *In re Patent File Company*, 6 Ch. App. 83; *Re Clough*, 31 Ch. D. 324.

nominal capital. A few weeks after this, the account of the company being overdrawn to the extent of more than 23,000*l.*, and the bankers pressing for security, the directors deposited with them the title deeds of the property on which the company carried on their business, and gave a memorandum of deposit under the seal of the company, making the deeds a security for the balance of account up to 25,000*l.* Within six months after this a resolution was passed for winding up :—Held, that the express power did not negative the general power, the rule being that a company may mortgage its property, unless it is expressly prohibited by its articles from so doing, and that the security was valid, notwithstanding it was given to secure a past debt.(*e*)

A mortgage by way of deposit will be good, notwithstanding that the company has not complied with the necessary formalities required by its articles.

A company deposited title deeds with a bank as collateral security for bills under discount. At the time the company was wound up they were indebted to the bank in respect of other bills than those actually discounted for them, and the securities realized more than was sufficient to cover the latter bills. Held, that the company could effect a mortgage by deposit of deeds without complying with the formalities required by their articles of association upon the execution of mortgage deeds ; that the bankers were not in the position of officers of the company, who were bound to see that the required formalities were complied with, and that the bank was entitled to hold the balance of the proceeds upon the sale of the securities to meet the whole amount due to them by the company.(*f*)

(*e*) *In re Patent File Company, Ex parte Birmingham Banking Company, supra.*

(*f*) *General Provident Assurance Company ; In re National Bank,* L. R. 14 Eq. 507. It has been held in later cases, however, that a mortgagee cannot so retain the surplus balance ; see *Talbot* v. *Frere*, 9 Ch. D. 568 ; *In re Gregson*, 36 Ch. D. 223. As to the obligation of an intended lender to inquire whether all formalities have been complied with by the company, see *Royal British Bank* v. *Turquand*, 6 E. & B. 332 ; *Howard* v. *Patent Ivory Company*, 38 Ch. D. 156.

Where a company overdraws its banking account on the security of a deposit of title deeds it is a borrowing by them.(*a*) Where the directors of a company were acting *ultra vires* there was a borrowing, but, *intra vires*, the company, their borrowing may be ratified by the company.(*b*)

Surrogation.—Where a company, having no power to borrow, does so, the person making the loan cannot recover the amount from the company; but if the sum, or some of it, has gone to pay creditors of the company, he is entitled to be subrogated to the rights of such creditors so paid.(*c*)

A benefit building society, which had no power to borrow money, was allowed by its bankers to make large overdrafts. In 1876 a memorandum was signed by the officers of the society and confirmed by the directors stating that certain deeds of borrowing members, which had been deposited with the bankers, were deposited not only for safe custody, but as a security for the balance from time to time. In 1881 an order for winding up the society was made, and the bankers claimed to retain the deeds as security for the balance of their account. No evidence was given as to the application of the money which was drawn out by the society; but it was admitted that some part was applied in payment of members withdrawing from the society, and the remainder in payment of salaries, legal expenses, and expenses of mortgaged property.

The Court of Appeal held that the overdrafts were *ultra vires*, being a borrowing not authorised by the rules, and not properly incident to the course and conduct of the society's business for its proper purposes, and that the bankers were not creditors of the society in respect of the overdrafts; but that they were entitled to hold the deeds as

(*a*) *Brooks* v. *Blackburn Benefit Society*, 9 App. Cas. 865; and see *Looker* v. *Wrigley*, 9 Q. B. D. 397.

(*b*) *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 366.

(*c*) *Blackburn Building Society* v. *Cunliffe Brooks and Company*, 22 Ch. D. 61; *Brooks* v. *Blackburn Building Society*, 9 App. Cas. 857; *Re Cork and Youghall Railway Company*, 4 Ch. App. 748; *Baroness Wenlock* v. *River Dee Company*, 19 Q. B. D. 155.

a security for repayment of so much only of the moneys advanced by them as was applied in payment of the debts and liabilities of the society, properly payable, and had not been repaid to the bankers, excluding payments to withdrawing members: that the burden of proving this lay on the bankers; and in satisfying that burden the banker could not have the benefit of the rule in *Clayton's Case* (1 Mer. 572).

The Court of Appeal made an order accordingly, directing inquiries, with a declaration that in making the inquiries the bankers were to be charged with all sums received by them on account of the society since it ceased to have any balance to its credit with the bankers, and that they were not to be allowed any sums—advanced by them since that date—which were applied in making payments to withdrawing members, or otherwise than in paying such debts and liabilities of the society as aforesaid. The society did not appeal against this order; the banker did.

Without expressing any opinion on the question of payments to withdrawing members or the banker's right to hold the securities—held, that the decision and order of the Court of Appeal were, in other respects, right.(*d*)

Deposit of Deeds by Agent exceeding his Authority.—If an owner of deeds has placed them under the control of another, and has authorised him to pledge them for a certain sum, and he pledges them for more with a person dealing with him *bonâ fide* and without notice of the limit of his authority, the owner of the deeds cannot redeem them without paying the full amount advanced upon them.(*e*)

The owner of land deposited the title deeds with the U. Bank to secure an advance of 750*l*. Being desirous of obtaining a further advance of 1,500*l*., he authorised

(*d*) *Brooks and Company* v. *Blackburn Benefit Building Society*, 9 App. Cas. 857.
(*e*) *Perry-Herrick* v. *Attwood*, 25 Beav. 205; *Briggs* v. *Jones*, L. R. 10 Eq. 92.

his son to borrow 2,200*l.* from another bank, and gave him a written authority to receive the deeds from the U. Bank, on payment of the sum due to them. The son fraudulently pledged the deeds to a different bank from that which had been proposed for a much larger advance than he was authorised to borrow, forging his father's name to a promissory note and deposit note. Out of this advance he paid 750*l.* to the U. Bank and 1,500*l.* to his father, and kept the rest for his own use. The son afterwards induced the defendants to advance him a still larger sum, out of which the advance by the bank was paid off and the land was conveyed to the defendants by forged deeds by way of mortgage for securing the advances. The defendants had no notice of the fraud, and the dealings with the property were kept secret from the father. Subsequently, the son absconded and the facts then became known to the father. He brought an action against the defendants, claiming to redeem the property on payment of 2,200*l.*, which he had authorised his son to borrow.

Held (affirming the decision of WRIGHT, J.), that the plaintiff, having placed the deeds in the control of his son, could not redeem the property without paying the whole amount which his son had raised upon them, although the son had exceeded his authority in raising more than he was instructed to raise, and had effected his purpose by forgery.(*a*)

Foreign Bonds.—It is now clearly settled that an instrument that is negotiable by the law of a foreign country is not a negotiable instrument by the law of England, so as to give a *bonâ fide* holder for value, a good title against an owner of the instrument, from whom it has been stolen, in the absence of any evidence of a custom of merchants in this country to treat it as negotiable. This was decided in *Picken* v. *London and County Banking*

(*a*) *Brocklesby* v. *Temperance Building Society* [1893], 3 Ch. 130; [1895], A. C. 173.

Company,(*b*) in which Lord ESHER, M.R., gave judgment as follows:—

"In this case the plaintiff brings his action of detinue to recover from the defendants certain Prussian bonds of which the defendants have possession. His case is that the bonds were stolen from him, that no title to the bonds passed to the thief, and that the defendants cannot therefore make a title to them. The defendants in answer say that, although the thief had no property in the bonds, yet the delivery of them to the defendants, who took them *boná fide*, and for valuable consideration, passed the property in them to the defendants on the ground that they were what are known in English law and trade as negotiable instruments. This contention raises the question whether these bonds without the coupons were for this purpose negotiable instruments according to the law of England. Evidence was given by Prussian experts that, according to the law of Prussia, the property in these bonds without the coupons passes by delivery. I will assume for the purposes of this case that it was proved that the bonds without the coupons were negotiable instruments in Prussia, in the fullest sense of the term. I doubt very much whether there was sufficient proof that they were. The experts on whose evidence the defendants relied were Prussian lawyers. If the question of the negotiability of these instruments depended on a Prussian enactment, or the construction of the terms of the instrument, then such evidence might be the proper evidence on the subject; but, so far as it might depend on a question of trade custom in Prussia, I doubt whether the evidence of lawyers would be the proper evidence. I rather think that the evidence of the Prussian witnesses, whose business would make it likely that they should know the custom of trade in Prussia, tended to shew that these bonds without the coupons were not negotiable instruments by the custom of

(*b*) 18 Q. B. D. 515, 517; approved in *Williams* v. *Colonial Bank*, 38 Ch. D. 404.

trade there. But I will assume that they were negotiable instruments in Prussia in the fullest sense of the term. The question is, what under those circumstances is the English law with respect to them. The common law of England does not allow a party to a contract to transfer his right under the contract to another person except in certain cases. Such a transfer of a *chose in action* could of course be made under the provisions of a statute: and in the case of instruments which by the custom of merchants recognised by the law of England had become negotiable instruments. But it appears to me that in order to establish such an exception to the common law rule *some custom of merchants obtaining in this country must be proved or some English statute must be relied on. If all that can be proved is that by the law or custom in Prussia, the instrument is negotiable, then, as it seems to me, the answer is that an English court and English merchants are not bound by a law or custom of trade in Prussia.* To prove that an instrument is negotiable in the sense required, *there must be something to make it so by English law.* There is no question here of any statute; nor is it shown that there is any custom of merchants in this country to treat these bonds without the coupons as negotiable. It is not necessary, I think, to decide in this case what would be *primâ facie* evidence of such a custom. It is not disputed that the evidence in this case justified the learned judge in the court below in saying that there was nothing to shew that by the custom of trade in England these bonds were negotiable, so as to be negotiable instruments in the full sense of the term. On the contrary, the evidence was that they were not, for I understand the effect of the evidence of the plaintiff's witnesses not to be confined merely to the practice of the London Stock Exchange; but as referring to the practice among merchants and business men in general. If it were necessary to say what would be *primâ facie* evidence of the negotiability of an instrument in this or in a foreign country, I should be disposed to say

that evidence that an instrument is by the custom of trade negotiable here would be strong evidence that it is negotiable in the country of its issue, but *that evidence that it is negotiable by the custom of trade in the country of issue would not be evidence that it is negotiable here.*

"It seems to me that these considerations are sufficient to decide the case. None of the cases cited, such as *Goodwin* v. *Robarts*,(*a*) *Lang* v. *Smyth*,(*b*) and *Wookey* v. *Pole*,(*c*) seem to contravene the view I have expressed, viz., that, to *render a foreign instrument negotiable here in the full sense of the term, it is not sufficient to shew that by the foreign law or custom it is treated as negotiable.* On the contrary they all seem to me to support it."(*d*)

Stamping.—As to the stamping of marketable securities see Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 82—85, and Sched. I. thereto, and Customs and Inland Revenue Act, 1893 (56 & 57 Vict. c. 7, s. 4).

A coupon, for interest on a marketable security as defined by the Stamp Act, 1891, being one of a set of coupons, whether issued with the security, or subsequently issued in a sheet, is not chargeable with any duty.(*e*)

Bills of Exchange, Promissory Notes, Exchequer Bills, and other Negotiable Instruments.—Where bills, promissory notes or other negotiable instruments made payable to bearer or indorsed in blank are deposited merely by way of security, the property in them remains with the depositor, both as against the depository and a third party with notice,(*f*) but the *bonâ fide* holder for value without

(*a*) 1 App. Cas. 476.
(*b*) 7 Bing. 284.
(*c*) 4 B. & Ald. 1.
(*d*) See also *Gorgier* v. *Melville*, 3 B. & C. 45; *Hazeltine* v. *Siggers*, 18 L. J. Ex. 160; *Crouch* v. *Credit Foncier of England*, L. R. 8 Q. B. 374; *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194; *London and County Bank* v. *River Plate Bank*, 21 Q. B. D. 535; *Sheffield* v. *London Joint Bank*, 13 App. Cas. 333; *Simmons* v. *London Joint Bank* [1892], A. C. 201; 61 L. J. Ch. 723.
(*e*) Finance Act, 1894, s. 40. See *Rothschild* v. *Commissioners* [1894], 2 Q. B. 142.
(*f*) *Goggerly* v. *Cuthbert*, 2 N. R. 170. See Bills of Exchange Act,

notice of such negotiable securities acquires a good title thereto, notwithstanding the fraud or absence of title of the person from whom he received them.

A broker was in the habit of pledging his customer's securities *en bloc* with a bank, as security for advances to himself. Among these were mortgage bonds belonging to the plaintiff which were transferable by delivery and which had been deposited by him with the broker. The bankers had no notice and no reason to suspect that the broker had no right to pledge these bonds for his own purposes:—Held, that the bankers having acted in good faith and without notice of the broker's fraud, were entitled to retain and realize the bonds to repay themselves the money due by the broker.(*a*)

As to when an Instrument is Negotiable.—"It may be laid down as a safe rule," said Mr. Justice BLACKBURN, in *Crouch* v. *Credit Foncier*,(*b*) "that where an instrument is by the custom of trade transferable, like cash, by delivery, and is also capable of being sued upon by the person holding it *pro tempore*, then it is entitled to the name of a 'negotiable instrument,' and the property in it passes to a *bonâ fide* transferee for value, though the transfer may not have taken place in *market overt*. But that if either of the above requisites be wanting, *i.e.*, if it be either not accustomably transferable, or though it be accustomably

1882, s. 21 (2). As regards exchequer bills, see *Wookey* v. *Pole*, 4 B. & Ald. 1. As regards cheques crossed "not negotiable," see *ante*, p. 71.

(*a*) *London Joint Stock Bank* v. *Simmons* [1892], A. C. 201; 61 L. J. Ch. 723. And see *Bentinck* v. *London Joint Stock Bank* [1893], 2 Ch. 121; *Earl of Sheffield* v. *Joint Stock Bank*, 13 App. Cas. 333; *The London and County Banking Company* v. *River Plate Bank*, 21 Q. B. D. 535; 57 L. J. Q. B. 601; *Goodwin* v. *Robarts*, L. R. 1 App. Cas. 476; 45 L. J. Ex. 741, and see *ante*, p. 155.

(*b*) L. R. 8 Q. B. 373; at p. 381.

"This statement," says Mr. Chalmers, in his book on "Bills," (4th edit.), p. 312, "appears to require qualification in two respects, for first, an instrument, not otherwise negotiable, may be made negotiable by statute; and secondly, foreign Government Bonds to bearer may undoubtedly be negotiable, yet the holder cannot sue the foreign Government upon them in the courts of this country; but the explanation may be that the exemption of a foreign Government from suit in this county is a personal exemption and does not arise out of any defect of title on the part of the holder."

transferable; yet, if its nature be such as to render it incapable of being put in suit by the party holding it *pro tempore*, it is not a "negotiable instrument," nor will delivery of it pass the property in it to a vendee, however *bonâ fide*, if the transferor himself have not a good title to it, and the transfer be made out of *market overt*.

Bills of Lading.—A bill of lading is a contract in writing, signed and delivered by the owner or master of a ship, whereby he acknowledges the receipt of goods and undertakes to convey them (unless prevented from so doing by the act of God, the Queen's enemies, accidents of navigation or fire), and to deliver them, on payment of freight, to the person mentioned therein, or his order or assigns. So long as the goods are *in transitu*, the vendor has a right to stop them as against the vendee, in the event of the latter's insolvency;(*c*) but stoppage *in transitu* does not rescind the contract of sale altogether.(*d*)

An unpaid seller's right of stoppage *in transitu* is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has consented thereto; but where the bill of lading has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of stoppage *in transitu* is defeated; and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of stoppage *in transitu* can only

(*c*) *Lickbarrow* v. *Mason*, 2 T. R. 70. See section 44 of Sale of Goods Act, 1893, *infra*.

(*d*) See Sale of Goods Act, 1893, s. 48. As to when goods are *in transitu*, see *Bolton* v. *Lancashire and Yorkshire Railway Company*, L. R. 1 C. P. 431; *Rodger* v. *Comptoir D'Escompte de Paris*, L. R. 2 P. C. C. 398; *Merchant Banking Company* v. *Phœnix Bessemer Steel Company*, 5 Ch. D. 205. *In re Worsdell*, 6 Ch. D. 783; *In re McLaren*, 11 Ch. D. 68; *Ex parte Borevean China Clay Company*, 11 Ch. D. 560; *Kendall* v. *Marshall*, 356; *Ex parte Miles*, 15 Q. B. D. 39; *Bethel* v. *Clark*, 20 Q. B. D. 615; *Lyons* v. *Hoffnung*, 15 App. Cas. 291; and Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 45.

be exercised subject to the rights of the transferee (56 & 57 Vict. c. 71, s. 47).

The law of Scotland, as well as the law of England, is that a pledgee may re-deliver the goods to the pledgor for a limited purpose without thereby losing his rights under the contract of pledge. The pledgees of a bill of lading returned it to the pledgors to obtain delivery and sell on behalf of the pledgees and account for the proceeds towards satisfaction of the debt :—Held, that the pledgees' security was not affected and that they were entitled to the proceeds of the cargo as against the creditors of the pledgors.(*a*)

Dispositions by Mercantile Agents.—By the Factors Act, 1889 (52 & 53 Vict. c. 45, s. 2),(*b*) it is enacted that where a mercantile agent is, with the consent of the owner, in possession of goods(*c*) or of the documents of title to goods, any sale, *pledge*, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent,(*d*) shall, subject to the provisions of the Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

By section 1 of the Act, the expression "mercantile agent" means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. The expression "document of title" is by the same

(*a*) *North Western Bank* v. *Poynter* [1895], A. C. 56.

(*b*) See as to the general policy of the various Factors Acts, *Cole* v. *North Western Bank*, L. R. 10 C. P. 354.

(*c*) By section 1, sub-section (3), "goods" includes "wares and merchandise."

(*d*) See *Hastings* v. *Pearson* [1893], 1 Q. B. 62; *Biggs* v. *Evans* [1894], 1 Q. B. 62, and see next note.

section, sub-section (4), made to include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods,(*e*) and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive the goods thereby represented.

And by sub-section (5), the expression "pledge" includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance, or of any further or continuing advance, or of any pecuniary liability.

A sale, pledge, or other disposition by a mercantile agent, which would have been valid if the consent of the owner to his being in possession of the goods or documents of title had continued, will be valid notwithstanding the determination of the consent, provided the person taking under the disposition has not at the time thereof notice that the consent has been determined.(*f*)

Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being, or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of the Act, be deemed to be with the consent of the owner. For the purposes of the Act the consent of the owner shall be presumed in the absence of evidence to the contrary.(*g*)

By section 3, a pledge of the documents of title to goods shall be deemed to be a pledge of the goods; and by section 4 it is further enacted, in respect to pledges, that where a mercantile agent pledges goods as security for

(*e*) See *Ex parte Close*, 54 L. J. Q. B. 43; *Re Cunningham*, 54 L. J. Ch. 44.

(*f*) Section 2 (2).

(*g*) Section 2 (3) (4).

a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.(*a*)

Disposition by Seller remaining in Possession of Goods.—Where a person, having sold goods, continues, or is, in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, [or under any agreement for sale, pledge, or other disposition thereof], to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect, as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.(*b*)

Disposition by Buyer obtaining Possession.—Where a person having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, [or under any agreement for sale, pledge, or other disposition thereof,] to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.(*c*)

(*a*) As to the rights acquired by exchange of goods or documents, see section 5; as to agreements through clerks, &c., section 6; and as to provisions as to consignors and consignees (section 7).

(*b*) See section 8 of the Factors Act, 1889, reproduced, except as to words in brackets, by section 25 (1) of the Sale of Goods Act, 1893.

(*c*) Factors Act, 1889, s. 9, reproduced, except as to words in brackets, by section 25 (2) of the Sale of Goods Act, 1893. See *Helby* v. *Mathews* [1895], A. C. 471; *Shenstone* v. *Hilton* [1894] 2 Q. B. 452; *Lee* v. *Butler* [1893], 2 Q. B. 318; *Nicholson* v. *Harper* [1895], 2 Ch. 415; *Hull Rope Company* v. *Adams*, 65 L. J. Q. B. 114. At common law,

Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu*, as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.(*d*)

Deposit of Goods.—But, apart from the Acts we have been considering, where goods are deposited by way of security, a banker is bound, at common law, to take care that the person depositing is entitled to the goods; otherwise the banker may at any time be called upon to surrender them or their value to their real owner;(*e*) and a person, though he comes into possession of goods properly, nevertheless does not always take or retain the right to dispose of them; thus, if a person is entrusted with jewels in a bag sealed, to be kept safely for the use of the real owner, he becomes possessor *malâ fide* by breaking the seals; he has no right to the property, and he cannot transfer to the banker more right than he has himself.(*e*)

A person receiving goods by way of security for an advance has, it has been held, a lien on such goods for advances made subsequently to, though not on, that security.(*f*) Considerable doubt, however, exists as to the correctness of this decision,(*g*) while it is clear no such right would exist as against the pledgor's creditors or subsequent purchasers.(*h*)

BLACKBURN, J., observed in *Cole* v. *North Western Bank*, L. R. 10 C. P. at p. 373, it had frequently been decided that a sale or pledge of a delivery order or other document of title (not being a bill of lading) by the vendee, did not defeat the unpaid vendor's rights, because the vendee was not entrusted as an agent.

(*d*) Factors Act, 1889, s. 10; reproduced and developed by Sale of Goods Act, 1893, s. 47. See *ante*, p. 177.

(*e*) *Hartop* v. *Hoare*, 3 Atk. 44.

(*f*) *Demainbray* v. *Metcalfe*, 2 Vern. 691.

(*g*) See Fisher on "Mortgages" (4th edit.), p. 572, note (*b*), and cases there quoted.

(*h*) *Adams* v. *Claxton*, 6 Ves. 229; *Vanderzee* v. *Willis*, 3 Bro. C. C. 21; *Talbot* v. *Frere*, 9 Ch. D. 568.

Where a time is fixed for repayment of the advance, and default is made by the pledgor, the banker may sell the goods ;(*a*) and where no such time is named, the better opinion would seem to be that he may also do so, provided he first makes a formal demand on the pledgor to fulfil his engagement, and gives him notice of his intention to sell, in the event of his making default.(*b*) But when the sale has taken place, any surplus that remains out of the proceeds after the pledgee has repaid himself his debt, interest, and costs, must be handed over to the pledgor.(*c*)

The pledgee is bound to exercise ordinary diligence and care in keeping the subject-matter of the pledge, and, so long as he does this, he is not liable for its loss or destruction, nor is he prevented from suing for the amount so secured.(*d*) A pledgee may re-deliver the goods to the pledgor for a limited purpose without thereby losing his rights under the contract of pledge.(*e*)

Bills of sale.

When goods are mortgaged by bill of sale as security for an advance, the banker must be careful that all the requisites of the Bills of Sale Acts, 1878 and 1882, have been complied with, or otherwise he may find that his security is worthless. What these requisites are, and what is the result of not complying with them, will be found fully stated in a subsequent chapter.(*f*)

Neither must bankers take by way of security for an existing debt a bill of sale which deprives the grantor of all, or substantially all, his property, as the execution of such an instrument is an act of bankruptcy.(*g*) As to

(*a*) *Pothonier* v. *Dawson*, Holt, 385. See *Pigot* v. *Chubley*, 15 C. B. (N.S.) 701.

(*b*) *Martin* v. *Read*, 11 C. B. (N.S.) 730 ; 31 L. J. C. P. 126.

(*c*) *Wilson* v. *Tooker*, 5 Bro. P. C. 193. See also *Attenborough* v. *St. Katherine's Dock Company*, 3 C. P. D. 464 ; 47 L. J. C. P. 763.

(*d*) *Coggs* v. *Bernard*, 2 Ld. Raymond, 909 ; 1 Sm. L. Ca. 227.

(*e*) *North Western Bank* v. *Poynter* [1895], A. C. 56.

(*f*) *Post*, Chapter on "Bills of Sale."

(*g*) *Ex parte Andrews*, 4 Ch. D. 509 ; 46 L. J. Bank. 23 ; *Lomax* v. *Buxton*, L. R. 6 C. P. 107 ; *Re Cooke*, 9 Ch. D. 553 ; and the doctrine applies whether the grantor is or is not a trader : Bankruptcy Act, 1883, s. 4 (*b*). And although the whole of the debtor's property is not comprised in the bill of sale it will be void, if the transaction is not a *bonâ fide* one but merely a continuance to give a fraudulent preference. See *Ex parte Pearson*, L. R. 8 Ch. 667 ; *Ex parte Hall*, 14 Ch. D. 132.

when such an assignment will amount to an act of bankruptcy, MELLISH, L.J., thus summarizes the law:—"The result of the authorities is, that where a debtor assigns his whole property as a security for a past debt only, it is an act of bankruptcy, whatever the motives of the parties may have been. If there is also a further advance it is not a question whether the further advance is great or small, but whether there was a *bonâ fide* intention of carrying on the business."(*h*)

"The real test," said COTTON, L.J., "is (whatever the amount of the advance as compared with the antecedent debt was) did the lender intend that the advance should enable the debtor to carry on his business, and had he a reasonable ground for believing that it would enable him to do so?"(*i*)

Ships.—By the Merchant Shipping Act, 1894,(*k*) a registered ship, or any share therein, may be made security for a loan by way of mortgage in two ways: (1.) by a direct mortgage with registration; (2.) by a mortgage under a mortgage certificate.

(1.) The mortgage must be in the form marked B. in the first part of the First Schedule to the Act, or as near thereto as circumstances will permit, and on its production the registrar of the port where the ship is registered shall record the same in the register book.(*l*) The mortgages are registered in the order of time of their production,(*m*) and where there is more than one mortgage registered of

(*h*) *Ex parte Ellis*, 2 Ch. D. 798, approved in *Ex parte Chaplin*, 26 Ch. D. 319. See also *Lomax* v. *Buxton*, L. R. 6 C. P. 107; *Jones* v. *Harber*, L. R. 6 Q. B. 77; *Philps* v. *Hornstedt*, 1 Ex. D. 62; *Ex parte Fisher*, L. R. 7 Ch. 636; *Harrison* v. *Cohen*, 32 L. T. 717; *Ex parte Payne*, 11 Ch. D. 539; 40 L. T. 296; 27 W. R. 368; *Ex parte Izard*, L. R. 9 Ch. 271; 43 L. J. Bank. 31; *Ex parte Johnson*, 26 Ch. D. 338; 53 L. J. Ch. 732.

(*i*) *Ex parte Johnson*, *supra*. In the case of a non-trader, the question would be, was it a similar kind of advance made for the purpose of enabling him to meet his engagements. See Robson on "Bankruptcy" (7th edit.), p. 155.

(*k*) 57 & 58 Vict. c. 60.

(*l*) 57 & 58 Vict. c. 60, s. 31 (1).

(*m*) Section 31 (2).

the same ship or shares therein, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other, according to the date at which each instrument is recorded in the register book, and not according to the date of each instrument itself.(*a*) It would, however, seem that an unregistered mortgage can be enforced as against all persons except registered transferees or mortgagees.(*b*)

Except so far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not, by reason of the mortgage, be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be the owner.(*c*)

Mortgagee in possession.

A mortgagee is not entitled to possession unless money is due to him under the mortgage, or the mortgagor is doing something to impair the security.(*d*) A mortgagee who has taken possession becomes entitled to the accruing freight,(*e*) and to use or sell the ship.(*f*)

The rights of a registered mortgagee are not affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage; and the mortgaged property is not considered as being in the apparent ownership of the bankrupt within the meaning of the Bankruptcy Act, 1883, and the mortgagee will be preferred to the trustee in bankruptcy.(*g*)

(2.) A mortgage certificate is a power given to the owner of a ship or share therein by the registrar enabling him to mortgage such ship or share.(*h*)

(*a*) Section 33. See *Keith* v. *Burrows*, 1 C. P. D. 733; 2 C. P. D. 160; 2 App. Cas. 636.

(*b*) See *Keith* v. *Burrows*, *supra*; *Black* v. *Williams* [1895], 1 Ch. 408; 64 L. J. Ch. 137. As to priority of mortgages taken to secure future advances, see *The Benwell Tower*, 72 L. T. 664.

(*c*) Section 34; a power of sale is conferred by section 35. See *Banner* v. *Berridge*, 18 Ch. D. 254.

(*d*) *The Blanche*, 58 L. T. 592.

(*e*) *Wilson* v. *Wilson*, L. R. 14 Eq. 32; *Keith* v. *Burrows*, *supra*; *Brown* v. *Tanner*, L. R. 3 Ch. 597.

(*f*) *De Mattos* v. *Gibson*, 1 Jo. & H. 75; *The Celtic King* [1894], P. 175.

(*g*) Section 36.

(*h*) Section 39.

By section 40, before a certificate is granted, certain requisites have to be complied with; and by section 41, certain restrictions are imposed on the granting of it.

Certificates of mortgage must contain a statement of the several particulars mentioned in section 42, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage affecting the ships or shares in respect of which such certificates are given.(i)

Priorities.

Every mortgage which is so registered shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and if there be more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each mortgage is registered on the certificate, and not according to the date of the mortgage.(k)

By section 57, equities may be enforced against owners and mortgagees of ships in respect of their interest therein in the same manner as equities may be enforced against them in respect of any other personal property.(l)

Equitable mortgages.

So an owner of a ship executing an absolute transfer of his interest therein is not precluded from showing that the legal intention was to give the transferee only a security by way of mortgage.(m) Equitable mortgages of ships are, therefore, valid without registration, as against all persons except registered transferees and mortgagees.(n) The deposit of a builder's certificate of an unfinished ship by way of security creates an equitable mortgage,(o)

(i) Section 42.

(k) Section 43 (5). See the same section for rules to be observed as to certificates of mortgage.

(l) See *Black* v. *Williams* [1895], 1 Ch. 408; 64 L. J. Ch. 137. By section 56, no notice of any trust is to be entered in the register book.

(m) *Ward* v. *Peck*, 13 C. B. (N.S.) 668; 32 L. J. C. P. 113; see also *The Cathcart Case*, L. R. 1 A. & E. 314; *The Innisfallen Case*, 1 L. R. A. & E. 314.

(n) *Stapleton* v. *Hayman*, 2 H. & C. 918; 33 L. J. Ex. 17.

(o) *Ex parte Hodgkin*, L. R. 20 Eq. 746.

as also does the deposit of a registered mortgage.(*a*) In the case of a mortgage of a ship or cargo notice should be given to the master or consignee.(*b*)

Mortgages of future freight or of cargo to be acquired during a voyage may be made,(*c*) but notice should be sent to the master.(*d*)

As there is no doubt that a person may give an effectual security upon property of his at sea, before it has come to hand, so he may also pledge a policy of marine insurance with another person or with bankers, and they, if due notice has been given to the underwriters or insurance company, will be entitled to receive the principal sum insured, upon the event insured against happening.

On Change of Firm.—The question may frequently arise, in practical banking, as to the effect of a change of firm upon a security deposited with the bank before the alteration. Where it is intended that the security should enure for the benefit of the future members of the firm, it should be so stated in the memorandum of deposit; but such intention may be proved by parol evidence, or by evidence of the dealings with the new firm from which a new agreement may be inferred.(*e*)

A customer deposited the title deeds of a copyhold estate with his bankers, the deposit being agreed to be as a security, not only for a sum already advanced by the bankers to him, but also for any other sums of money which might be afterwards advanced by the firm. Afterwards, one of the firm died, and another person was afterwards added to the firm, everything else remaining the same as before in the relations of the customer to the firm. About six years elapsed, when a *fiat* in bankruptcy issued against the depositor, and it became a question

(*a*) *Lacon* v. *Liffen*, 32 L. J. Ch. 25; *Black* v. *Williams* [1895], 1 Ch. 408; 64 L. J. Ch. 137.
(*b*) *Langton* v. *Horton*, 1 Hare, 549.
(*c*) *Gardner* v. *Lachlan*, M. & C. 129; *Leslie* v. *Guthrie*, 1 Scott, 683.
(*d*) *Langton* v. *Horton*, *supra*.
(*e*) *Ex parte Kensington*, *infra*.

whether the deposit enured to the benefit of the new firm;—it was held that it did so; for the circumstances amounted to a tacit acknowledgment, that the deeds were deposited with the new firm on the same terms as they had been with the old one.(*f*) It may, probably, now be laid down with confidence, that the continuance of the same modes of dealing with the new firm as with the old, and the continuance of the deposit in the hands of the new firm, will be construed into a tacit recognition by the depositor, that the new hold the deeds for the like object and purpose as the old one did, and stand in the same relation to him. Nevertheless, in practice, it is desirable for bankers, in order to avoid all questions, as to whether a sufficient period has elapsed to enable the Court to say that the intention of the depositor was clearly manifested, and to make it quite certain that he was aware of the change, &c., to have a fresh memorandum of deposit made, in order to secure the new firm.

Two traders, in partnership, having had for many years an account with a bank, deposited with them certain title deeds of an estate belonging to one of the partners separately, as a security for the balance which might be due to the bank from the firm, from time to time, upon the account current. No written memorandum was at that time made of the object of the deposit; but afterwards upon a further advance by the bank, the owner of the title deeds signed a letter or memorandum stating the deposit to be for securing that as well as future advances. The banking firm had undergone some changes in its members after the deposit was made, and, in point of fact, all the advances made by the banking firm with whom the deposit was made had been paid off by the traders; but fresh advances were made by the new banking firm, who continued to hold the deeds; it was, nevertheless, held that

(*f*) *Ex parte Kensington*, 2 Ves. & B. 79, 83; *Ex parte Oakes*, 2 M. D. & De G. 234; *Ex parte Smith*, 2 M. D. & De G. 314. See 19 & 20 Vict. c. 97, s. 4.

the security was a continuing security, and that the banking firm was equitable mortgagee of the estate to the amount of their advances.(*a*)

Lis Pendens respecting the Mortgaged Property.—The doctrine of *lis pendens* does not apply to personal property other than chattel interests in land.

A firm of traders assigned their book debts to the plaintiffs, who gave no notice of the assignment to the debtors. The plaintiffs brought an action against the firm to enforce their security, which they registered as a *lis pendens*, and obtained an injunction and a receiver; but no notice of the action was given to the debtors. The firm then assigned the same book debts to a banking company, who gave notice of their security to the debtors. The banking company had no notice of the action or of the order for an injunction and a receiver, unless the registration of the *lis pendens* amounted to constructive notice:—Held (reversing the decision of CHITTY, J.), that the banking company were not affected with notice by the registration of the *lis pendens*, and that their security had priority over that of the plaintiff. *Semble*, also, that, even if the registration had given the banking company notice of the *lis pendens*, the plaintiffs would have lost their priority by their laches.(*b*)

Return of Securities.—A banker holding securities which have been deposited with him by way of equitable mortgage, must deliver up the securities upon being paid the amount covered by the deposit.(*c*)

(*a*) *Ex parte Smith*, 2 M. D. & De G. 314.
(*b*) *Wigram* v. *Buckley* [1894], 3 Ch. 483.
(*c*) *Ex parte Adair; In re Gross*, 24 L. T. (N.S.) 198.

CHAPTER XX.

DEPOSIT OF VALUABLES, ETC., FOR SAFE CUSTODY.

It is the custom of bankers to receive and to keep for the convenience of their customers boxes of plate, jewels, and securities, &c., but it is not usual for them to receive any direct remuneration for the responsibility thus undertaken, and they are therefore not uncommonly spoken of as being mere gratuitous bailees of their customers' property.(*d*) This may, generally speaking, be correct,(*e*) but, it is not, it is submitted, universally true.

It is not unusual to find among some bankers an express intimation by advertisement, prospectus or otherwise of their willingness to accept, when required, the property of their customers for safe keeping; now, if this intimation is brought to the knowledge of the intended customer at the time of opening the account, and is one of the inducements which lead him to open that account,

(*d*) This is the view that appears also to have been taken in the American courts. See *Smith* v. *National Bank*, 72 Penn. St. 471; *Foster* v. *Essex Bank*, 17 Mass. 501; *Lancaster Bank* v. *Smith*, 62 Penn. St. 47.

(*e*) It may, indeed, possibly be urged that in no case is a banker, strictly speaking, a gratuitous bailee under such circumstances. "It does not seem," says Mr. Bevan in his book on "Negligence," at p. 882, "by any means clear that that is necessarily the position of a banker receiving securities for safe custody and without any special agreement. There has grown up a practice of customers sending their jewels and securities to bankers to be taken care of. But the banker discriminates between customers and those who have no existing relations with his bank. If the latter were to wish to place securities with him he would either refuse or make a charge. The sum total of the relations of his customer with him makes a difference in this respect, that in the way of business he does differently in the customer's case from what he would if the relation of customer did not exist. Then, can it be fairly said that the position of the banker taking charge of securities for a customer is identical with that of a man entrusting his gold watch to a friend or locking up his deeds in a neighbour's house while he goes out of town? Unless the position is identical the banker can only be described as a gratuitous bailee in a strained and somewhat unnatural sense."

then, it is contended, on such an account being opened, the bankers become bailees for reward in respect of any property subsequently deposited with them; for, although they do not make a direct charge, they indirectly receive consideration by the very fact of the account being opened.

It was said in *Coggs* v. *Bernard*(a) and other cases that a gratuitous bailee was only liable for gross negligence, but this expression has been objected to as a definition, and has given rise to considerable conflict of opinion as to the amount of negligence or corresponding degree of care it implies. But whatever meaning is to be put upon it, this much at least seems clear from the authorities, that a less amount of care is due from a gratuitous bailee than from a bailee for reward.

The following is the leading case on the subject now under consideration, and in it this question of "gross" negligence is fully discussed and the authorities considered, it being, however, therein taken for granted that the bankers were gratuitous bailees.

The action was for damages against bankers as bailees for the negligent keeping of some railway debentures placed in their care by a customer. It appeared that the box containing such securities (of which the customer retained the key) was kept in a strong room in the bank, with the boxes of other customers, and specie and other securities belonging to the bank. Access to this room was only obtained by passing through a compartment where a cashier sat by day and a messenger slept at night. The strong room had two iron doors, which were opened by separate keys, which during the day were kept by the cashier who occupied the compartment. One of the keys was kept at night by the cashier of the bank, and the other key by another officer of the bank. Beyond this strong room there were two other rooms; in the outer of

(a) Lord Raym. 909.

the two, uncoined gold, and in the inner, bullion and unsigned notes were kept. The manager of the bank kept the key of the outer of these rooms, and one of the directors of the bank that of the inner. The owner of the box had free access to the room where his box was deposited during banking hours, in the presence of one of the bank clerks, when he had occasion to take out coupons from his debentures, for collection. While in such custody the cashier of the bank abstracted the debentures from the box, and made away with them. The Privy Council held, that the bankers, as gratuitous bailees, were not bound to exercise more than ordinary care of the deposits entrusted to them, and the negligence for which alone they would be made liable would have been the want of that ordinary diligence which a reasonably prudent man takes of his own property of the like description; and that, consequently, there was no negligence to render the bank liable for the loss of the securities in question.(b)

Langtry v. The Union Bank of London.

It will have been noticed that in the above case the property, the subject-matter of the deposit, was *stolen* from the bank, but in the recent case of *Langtry* v. *The Union Bank of London* which, unfortunately alike for the public and the legal profession was settled before trial, the loss of the plaintiff's property was occasioned not by any theft from the bank but by the bank giving up the property to a person presenting a forged order purporting to bear the plaintiff's signature and requesting the bankers to hand the plaintiff's box to the bearer, which signature the bank official believed to be genuine. Now had this case proceeded to trial it was obviously open to the plaintiff, under such facts as these, to argue that her bankers were responsible for the loss that had occurred on the simple ground that they were bound, as her bankers, to know her signature, and that, therefore, they were respon-

(b) *Giblin* v. *M'Mullen*, L. R. 2 P. C. 317; 38 L. J. P. C. 25.

sible, however cleverly it had been forged, and however free from negligence they had been.

On principle it is difficult to see how this argument could have been successfully met, provided the plaintiff had been in a position to prove that the bankers had received, either directly or indirectly, some benefit or advantage from their undertaking the charge of her property or, in other words, had received such property in their capacity of bankers. But if she had failed in this and it had been shown that they were gratuitous bailees of her property and nothing more, then it is probable the Court would have held that they were not bound under such circumstances to know the plaintiff's signature, for they had not received her property as bankers or in pursuance of any duty imposed upon them as such, either by contract or otherwise, and consequently they could not have imputed to them a knowledge which the law only imputes to them in their capacity of *bankers.* In such a case it is submitted a banker stands in respect of his liability to his customer in exactly the same position as every other gratuitous bailee, and the rule as to the knowledge of the customer's handwriting has no application.

Assuming, therefore, that the bankers were mere gratuitous bailees, and as such not bound to know their customer's signature, then probably the decision would have turned upon the old question of negligence, and it would doubtless have been left to the jury to say whether under all the circumstances of the case, and taking into consideration the fact that the bankers had received no reward for the responsibility undertaken by them, they had used that amount of care and precaution which could be reasonably expected from them; the Court possibly defining what amount of care and precaution is due from a gratuitous bailee.(*a*)

(*a*) It has been contended that on the facts of the above case the bank might have been held liable for conversion of the plaintiff's property by

Statute of Limitations.—Where securities are deposited for safe keeping the statute does not begin to run until demand to deliver up has been made and a refusal given.(*b*)

reason of their handing it over to a person not entitled to receive it, and the following cases have been cited in support of this contention :—*Hiort and Another* v. *Bott*, 43 L. J. Ex. 81 ; *Devereux* v. *Barclay*, 2 B. & A. 702 ; *Stevenson* v. *Hart*, 4 Bing. 476 ; *Youl* v. *Harbottle*, Peake, 49 ; *Heugh and Another* v. *London and North Western Railway Company*, 39 L. J. Ex. 48 ; *McKean and Others* v. *M'Iver*, 40 L. J. Ex. 30. On a careful perusal of these cases it is submitted that they do not fully support this view, and in the American case of *Lancaster Company Bank* v. *Smith*, 62 Penn. St. 47, where the facts were very similar to the case under discussion, the bank having handed over bonds to a wrong person, the decision proceeded on the question of negligence and not of conversion.

(*b*) *In re Tidd ; Tidd* v. *Overell* [1893], 3 Ch. 154.

CHAPTER XXI.

THE CUSTOMER'S PASS BOOK AND ACCOUNT.

Pass book. THE course of banking business in London makes the only general mode of stating and adjusting accounts between bankers and their customers, residing in or near the metropolis, to be as follows :—

A book, called a *pass book*, is delivered by the bankers to the customer, in which, at the head of the first page, and there only, the bankers by the name of their firm are described as the "debtor," and the customer as the "creditor" in the account. On the debit side are entered all sums paid to or received by the bankers on account of the customer, and on the credit side all sums paid to him or on his account, and these entries being summed up at the bottom of each page, the amount of each, or the balance between them, is carried over to the next folio without further mention of the names of the parties until, the book being full, it becomes necessary to deliver a fresh one to the customer. For the purpose of having the book made up by the bankers from their own books of account, the customer returns it to them from time to time ; and, the proper entries being made by them up to the day on which it is left for that purpose, they hand it again to the customer, who, thereupon, may examine it, and if there appears any error or omission it is his business to send it back to be rectified ; if he does not, his silence is regarded as an admission that the entries are correct ; but no other settlement, statement, or delivery of accounts, or any other transaction which can be regarded as the closing of an old, or the opening of a new, account, or as varying, renewing, or confirming (in respect of the persons or the parties mutually dealing) the credit given on either side

takes place in the ordinary course of business unless when the name or firm of one of the parties is altered, and a new account thereupon opened in the new name or firm.

The course of business is the same between such bankers and their customers resident at a distance from the metropolis, except that, to avoid the inconvenience of sending and returning the pass book, accounts are, from time to time, made out by the bankers, and transmitted to the customer in the country, when required by him, containing the same entries as are made in the pass book, but with the names of the parties "debtor" and "creditor" at the head, and with the balance struck at the foot of each account, and his silence is regarded as a tacit admission that the entries are correct.(*a*)

H. and C., being partners in business, were indebted to their banker in 979*l.* In 1851, the banker, with the consent of H. (C. living at a distance), transferred his business to the Midland Banking Company, including the account in question. The partnership account of H. and C. commenced with this item of 979*l.* in the Midland Bank books, but whilst it was open H. paid in moneys to an amount exceeding 979*l.* The pass book was regularly sent to H. In 1852, the Midland Bank gave notice to the banker that they would not take to this account, there being in the deed transferring the business a proviso that, at the expiration of twelve months as to such accounts as should not be taken to by the Midland Bank, they should, during a period not exceeding ten years, either accept or compel payment, or permit the same to remain due.

An action was afterwards brought by the Midland Bank against H. and C. to recover the balance due. But the Court held the debt of 979*l.* to be extinguished by the payment subsequently made by H. to the credit of the partnership account, and the assent to the appropriation to be inferred from his not objecting to the pass book, and

(*a*) See the custom of dealing, as found by the master in *Devaynes* v. *Noble*, 1 Mer. 535, 536.

that after such extinguishment as between the Midland Bank and the partnership this account could not be treated as an existing debt remaining due.(*a*) The acting member of a firm has implied authority to assent to the transfer of the account from one banker to another without the express assent of the other.(*b*)

A change of the title of a firm in a pass book, and entries therein to the credit of a new firm of the interest of securities given by the customer to the original firm, is notice of the assignment to the new firm of the securities given by the customer to the old firm.(*c*)

Credit given in a pass book binds the bankers, if on the faith of such credit the customer has altered his position, as by drawing on the fund, &c., for, by entering the sums to the customer's credit, they lead him to suppose that they have received them on his account. Where, however, there has been no such alteration the banker is allowed to show that the entries were made by mistake,(*d*) for the pass book is only *primâ facie* evidence against him.(*e*)

But this is subject to the proviso that the entries in the pass book are properly made on each side of it. A pass book, with entries on one side only, is not evidence of a settled account between the banker and the customer, although the book is kept by the customer, without objection to the entries.(*f*) So, entries in the pass book against the customer are *primâ facie* evidence against him if he has seen them and taken no objection to them, and returned the pass book.(*e*)

If an entry is alleged to have been made by mistake in the wrong place in a pass book by the banker's clerk, but

(*a*) *Beale* v. *Caddick*, 2 H. & N. 326.

(*b*) *Ibid.*

(*c*) *Cavendish* v. *Geaves*, 24 Beav. 163; 27 L. J. Ch. 314. See also as to implied acceptance of new firm by conduct: *Bilborough* v. *Holmes*, 5 Ch. D. 258.

(*d*) *Shaw* v. *Picton*, 4 B. & C. 715; *Shaw* v. *Dartnall*, 6 B. & C. 57; *Heane* v. *Rogers*, 9 B. & C. 586; *Hume* v. *Bolland*, 1 C. & M. 130; *Skyring* v. *Greenwood*, 4 B. & C. 281.

(*e*) *Commercial Bank of Scotland* v. *Rhind*, 1 Macq. H. L. Cas. 643.

(*f*) *Ex parte Randleson*, 2 Deac. & C. 534; see *Boardman* v. *Jackson*, 2 Ball. & B. 382.

by the customer denied to be any mistake, the question is for the jury upon the evidence.(*g*)

Making a false entry in what purports to be a pass book, with intent to defraud, is a forgery of an accountable receipt.(*h*)

Mode of keeping account.

When accounts between banker and customer have been carried on for a series of years on a particular footing, it will be presumed that there was originally an agreement to that effect, but acquiescence will not amount to a settlement of account.(*i*) When a banker discounts the bills of his customer, his account being overdrawn, and the amount of the discounts is simply carried to the credit of his account, the banker is the holder for value, though no money has actually passed.(*k*)

Debiting account with costs of action.

Bankers cannot debit a customer's account with the costs of actions brought by them on bills discounted for the customer unless at his request or with his consent.(*l*)

(*g*) *Snead* v. *Williams*, 9 L. T. (N.S.) Ex. 115.

(*h*) *Reg.* v. *Smith*, L. & C. 168; *Reg.* v. *Moody*, *ib.* 173; 24 & 25 Vict. c. 98, s. 23.

(*i*) *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756; *Clancarty* v. *Latouche*, 1 Ball. & B. 420; *Williamson* v. *Williamson*, L. R. 7 Eq. 542.

(*k*) *In re Carew*, 31 Beav. 39.

(*l*) This was decided by Baron MARTIN, in the case of *Holl* v. *The Mercantile and Exchange Bank, Limited*, tried before him and a special jury, in the sittings after Michaelmas term, November 27, 1865. It was an action to recover compensation in damages against the defendants for not having paid the amount of one of the plaintiff's cheques. The defendants admitted the usual contract between banker and customer, but said they had not sufficient money belonging to the plaintiff in their hands applicable to the payment of the cheque. The plaintiff, Mr. William Holl, who carried on business in Mincing Lane, had kept a drawing account at the bank of the defendants, and in August, 1864, they discounted for him a bill for 99*l.* 15*s.*, of which he was the drawer, and Messrs. Robertson and Ward were the acceptors. This bill became due in November following, and was dishonoured. Some negotiations then took place between the plaintiff and the manager of the bank, the result of which was that the defendants' solicitors, Messrs. Cotterell, issued a writ against the acceptors. Ultimately the plaintiff made provision for the bill, but a dispute arose as to whether he ought to pay 2*l.* 3*s.* 10*d.*, the costs of Messrs. Cotterell. The defendants claimed that sum, and debited his account with it, and the question now was, whether they had a right to do so. It was admitted that if they had they were justified in refusing to honour the cheque. For the defence it was stated that the plaintiff's account with the bank was opened in April, 1864, and closed in November following; that it was overdrawn as many as thirty-seven times during that period; that complaints had been frequently made to him about the account, and that he had been

Accounts at several branches.

When a banking company has branches in different localities, and a customer has an account at more than one branch, there is no duty on the company to keep the accounts distinct so as to bind it to honour cheques at a branch where the customer has a balance in his favour if, on a general settlement of account, the balance is against him, although it is the custom of the company so far to keep the accounts separately as to refuse to honour his cheques, except at the particular branch where the customer has a balance in his favour. And there is no legal obligation on a banker to give notice to his customer that he intends to transfer a balance against the customer from an account at one branch to an account at another branch.(*a*)

Charging account with interest and commission.

Where bankers have for a long course of time charged their customer interest with annual rests he is by his acquiescence taken to have consented to that mode of keeping his account.(*b*)

When the account between a banker and his customer is kept at compound interest, and the customer dies, the final balance at his death, in the absence of any agree-

repeatedly asked to withdraw it. It was also said that he called at the bank and asked the manager to sue the acceptors upon the bill in question, and that on a subsequent occasion he had been told that the solicitors' costs would be debited to his account. The manager, who was called, admitted that when he gave this intimation to the plaintiff, the plaintiff did not say he would consent to such a course; but he (the manager) said it was the usual practice amongst bankers to debit a customer's account with costs incurred under similar circumstances. Baron MARTIN said it was a practice which ought to be stopped. A bank had no right to debit a man's account with a charge of this kind against his will. The witness added that the bank had not actually put the money in the hands of Messrs. Cotterell, but had placed it to the credit of their account with the bank. On the part of the defendants, it was submitted that the plaintiff had sustained no real damage by the refusal to pay the cheque, and that a farthing damages would be sufficient to meet the justice of the case. On the other hand, it was contended that the credit of the plaintiff had been seriously injured, and severe comment was made on the conduct of the defendants in vindictively bringing before the public the state of his account with them. The jury found a verdict for the plaintiff—damages, 5*l.*

(*a*) *Garnett* v. *M'Kewan*, L. R. 8 Ex. 14; 42 L. J. Ex. 1; *Prince* v. *Oriental Bank*, L. R. 3 App. Cas. 325; 47 L. J. P. C. 42. See also *Willis* v. *Bank of England*, 4 A. & E. 21.

(*b*) *Crosskill* v. *Bower*, 32 Beav. 86; 32 L. J. Ch. 540.

ment to the contrary, carries no interest.(*c*) So, when the balance is in the favour of the customer, and the banker dies, or ceases to carry on business, or becomes bankrupt.(*d*)

When a mortgage security is given by a customer to his bankers for a fixed sum, and not in respect of a running balance, the banker is not entitled to include that sum in the banking account, and charge compound interest.(*e*) Bankers having a mortgage security and a banking account with their customer, in ascertaining the amount due between them, the accounts must in the first instance be taken separately, and on different principles.(*e*)

A customer being indebted to his bankers upon an account current, upon which compound interest had according to custom been charged by the bankers, executed a mortgage to them, to secure the amount of the current account. The customer afterwards executed a creditors' deed of which the bankers were appointed the trustees, and from that time he ceased to draw upon or pay money into the account: it was held, that the bankers were only entitled to simple interest from the date of the deed upon the balance due.(*f*)

A banking account which was largely overdrawn, was for the half-year ending June, 1867, charged with interest at 5*l*. per cent., and with a gross sum of 500*l*. for commission, in lieu of the charge of one-half per cent. previously made. The pass book balanced on this footing was sent to the customer, and the charges were explained to his

(*c*) *Crosskill* v. *Bower*, 32 Beav. 86; 32 L. J. Ch. 540.

(*d*) *Ibid.*; see also *Bates* v. *Robins*, 32 Beav. 73.

(*e*) *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756; and see *London Chartered Bank of Australia* v. *White*, 4 App. Cas. 413; 48 L. J. P. C. 75.

(*f*) *Crosskill* v. *Bower*, *supra*. It is the custom amongst bankers, finance companies, and others who lend money or stock for railway deposits, and execute Treasury bonds, that in the case of a deposit of stock an annual commission is charged, in addition to the dividends accruing thereon; and in the case of a bond, a premium is paid to the bondsman, either in one sum, or in the form of an annual payment. *Anon.*, 18 W. R. 996.

agent (the customer himself being in weak health, and unable to attend to business matters). The customer, who died in December, 1867, had not raised any objection to these charges. Now as the charge of 500*l.* for commission had been acquiesced in, it was valid for the half-year ending June, 1867, but acquiescence could not be inferred for subsequent half-years, there being nothing in the entry for the particular half-year that amounted to a contract to the same effect *in futuro.*(*a*) The right of the bank to charge compound interest terminated with the death of the customer; and from that period simple interest only at 5*l.* per cent. was chargeable on the account.(*a*)

Deduction of income tax.

Though in discounting bills and making loans for short periods bankers do not usually deduct income tax, yet in a mortgage transaction with their customers they are bound to allow income tax.(*b*)

Transferring from Account of one Customer to that of another.—The plaintiff and defendant each kept an account with a banker at M. In October, the plaintiff desired the defendant to pay into his account a sum due to him for rent. The defendant wrote to the plaintiff, stating that he had caused the amount to be transferred to his account, and the plaintiff sent him a receipt by return of post; the sum, however, was not actually transferred until the 8th of December. On the 9th, notice of the transfer was sent to the plaintiff by post, which did not reach him till the 11th. On the 10th, the banker stopped payment:—Held, that the transfer was equivalent to payment.(*c*)

Transfer from Current to Deposit Account.—Shortly after the death of G., a partner in a bank, T. transferred a sum from his current account to a deposit account. T. subsequently paid into and drew out of his current account

(*a*) *Williamson* v. *Williamson*, L. R. 7 Eq. 542.
(*b*) *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756.
(*c*) *Eyles* v. *Ellis*, 12 Moore, 306; 4 Bing. 112.

sums exceeding that transferred. The bank stopped payment:—Held by Court of Appeal, affirming CHITTY, J., that the transaction was the same as if T. had drawn a cheque for the sum and paid the proceeds into the deposit account. It was an entirely fresh contract, and G.'s estate was discharged.(*d*)

The liability of bankers on dishonouring the cheques of their customers is discussed in a previous chapter.(*e*)

(*d*) *In re Head; Head* v. *Head* (No. 2) [1894], W. N. 66; [1894], 2 Ch. 236.

(*e*) *Ante*, p. 46.

CHAPTER XXII.

GUARANTEES TO SECURE ADVANCES.

How made.

By the Statute of Frauds (29 Chas. 2, c. 3, s. 4), it is enacted that no action shall be brought whereby to charge a defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.(*a*) Consequently, no action can be brought against a surety unless his guarantee, or some note or memorandum thereof, is in writing signed by himself, or his lawfully authorised agent. The signature should be so affixed as to govern and give authority to every material portion of the agreement.(*b*) The appointment of the agent need not be in writing.(*c*) The guarantee, if under seal, need not be supported by a consideration, but if not, like every other simple contract, it must be.(*d*) Previous to 19 & 20 Vict. c. 97, s. 3, this consideration had to be expressed on the face of the guarantee, but since that Act this is no longer required.

On Change of Firm.—Even before the presently to be stated Act a guarantee, given by a person to secure a

(*a*) A similar enactment exists in Scotland, 19 & 20 Vict. c. 60, s. 6. A promise by A. to *indemnify* B. against a liability which B. is about to contract with a third person is not within section 4 of the statute. An oral promise by A. to B. that if B. would accept certain bills for a firm in which A.'s son was a partner, A. would provide B. with funds to meet the bills is a promise of *indemnity* and not of *guarantee*, and, therefore, not required to be in writing: *Guild* v. *Conrad* [1894], 2 Q. B. 885; *Sutton* v. *Grey* [1894], 1 Q. B. 288.

(*b*) *Caton* v. *Caton*, L. R. 2 H. L. 127.

(*c*) *Rossiter* v. *Miller*, L. R. 3 App. Cas. 1124.

(*d*) *Harris* v. *Venables*, L. R. 7 Ex. 235; *Wynne* v. *Hughes*, 21 W. R. 628, Ex.

banking copartnership, consisting of several members, all and every sums or sum of money which might become due to them from a certain customer for money advanced to him upon any bills, &c., made payable at the banking house of the copartnership, does not bind the obligor, after the death of one of the partners, nor cover future advances made after such death and the taking in of another partner; and the customer, who, at the time of the death, was indebted to the house, having afterwards paid off the balance incurred previously to the death, the obligor was wholly discharged.(*e*)

There is no doubt, however, that a guarantee might have been drawn in such terms as to serve as a continuing indemnity to the house, whatever might be the change of partners, if such intention appeared from the language used.(*f*) The Courts, both of equity(*g*) and common law,(*h*) were always against increasing the liability of a guarantor to a banking firm in this respect. This principle of construction, narrowing the liability of a surety when the advances to be secured are to be made to a firm, arises quite as strongly from the nature of the transaction itself; for it is obviously an assumption to conclude that a party guarantees advances to A. and B., because he is willing to guarantee advances to A., B., and C.

And since the decisions, which established this principle, the Legislature appears to have ratified and confirmed it, by enacting as follows:—(*i*)

"No promise to answer for the debt, default, or miscarriage of another made to a firm, consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm, consisting of two or more persons,

(*e*) *Strange* v. *Lee*, 3 East, 484; *S. P.*, *Weston* v. *Barton*, 4 Taunt. 67.
(*f*) See form in *Earle* v. *Oliver*, 2 Exch. 71, 72.
(*g*) *Pemberton* v. *Oakes*, 4 Russ. 154.
(*h*) *Chapman* v. *Beckington*, 3 Q. B. 703.
(*i*) 19 & 20 Vict. c. 97, s. 4.

or of a single person, trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done, after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties, that such promise shall continue to be binding notwithstanding such change, shall appear either by express stipulation, or by necessary implication, from the nature of the firm or otherwise."

Since this statute, therefore, guarantees may either expressly stipulate for the continuance of the undertaking (when the intention is that it should continue), notwithstanding changes in the firm ; or if the parties choose to take upon themselves the risk of determining that the firm is of such a nature as necessarily to imply the continuance of the guarantee, notwithstanding the change, they may do so, and need not insert an express provision to that effect ; and so they need not insert an express provision, if they choose to incur the risk of proving *aliunde* this to have been the intention ; but it is manifestly the safe and most convenient course in all cases to insert an express stipulation for the continuance of the instrument, notwithstanding any change in the constitution of the firm.

Continuing Guarantee as to Amount and Time.—Whether the liability of a surety is or is not a continuing one as to amount (that is to say, whether it is limited to a particular debt, or extending to a series of debts), or time, or both, is simply a question of construction, and is to be gathered from the instrument containing the guarantee or the circumstances of each particular case. In *Coles* v. *Pack*,(a) the following words were held to constitute a continuing guarantee as regards both amount and time :—"Now I do hereby, in consideration of your forbearing to take immediate steps for the recovery of the said sum, guarantee

(a) L. R. 5 C. P. 65.

payment of and agree to become responsible for any sum of money for the time being due from F. to you, whether in addition to the said sum or not."

So, where a father gave his son a promissory note for 2,000*l.*, which was endorsed by the son, and discounted by a banking company, who took from the father an agreement under seal, that in consideration of its discounting the note, certain deeds of the father's deposited at the same time should remain a security for all money due or to become due from the son to the company on any account whatsoever, and at the date of the agreement the son owed the company 3,000*l.* upon a running account, and the amount was subsequently increased to 5,000*l.*, the agreement was considered to be a continuing guarantee, and the bank was held to be entitled to prove against the father's estate, not only for the 2,000*l.*, the amount of the note, but for all sums due to them from the son.(*b*)

A debtor and his surety executed a joint and several bond for 14,000*l.* conditioned for avoidance if they or either of them should in satisfaction of the debt of 7,000*l.* then due from the debtor to the obligee pay the 7,000*l.*, with a proviso that the surety should not be liable under the bond for a sum or sums exceeding altogether in debt or damages 1,300*l.* The debtor having paid 1000*l.*, part of the debt, and then filed a petition for liquidation, the obligee proved for and received a dividend of 9*s.* 2*d.* in the pound on 6,000*l.* under the liquidation. After deducting from the 7,000*l.* the 1,000*l.* and the dividend, there remained more than 1,300*l.* due. The obligee having brought an action on the bond against the surety to recover 1,300*l.*, the surety contended that he was entitled to deduct from the 1,300*l.* a rateable proportion of the dividend, viz., 9*s.* 2*d.* in the pound on 1,300*l.*, and was only liable for the balance :—Held, that the intention of the bond was that the surety should guarantee the whole 7,000*l.*, though his liability was limited to 1,300*l.*; that he was,

(*b*) *Burgess* v. *Eve*, L. R. 13 Eq. 450.

therefore, not entitled to deduct a rateable proportion of the dividend, but was liable for the whole 1,300*l.* And in the same case it was laid down that when a surety gives a continuing guarantee, limited in amount, to secure the floating balance which may from time to time be due from the principal to the creditor, the guarantee is, as between the surety and the creditor, to be construed (*primâ facie* at least) as applicable to a part only of the debt co-extensive with the amount of the guarantee. But a guarantee limited in amount for a debt already ascertained, which exceeds that limit, is not *primâ facie* to be construed as a security for part of the debt only.(*a*)

A surety bound himself jointly to a banking company in 500*l.*, the condition of the bond being that if the obligors should from time to time pay all and every such sums or sum of money as should become due to the bank for money advanced to surety's co-obligor, and pay interest at 5*l.* per cent. per annum for such sums or sum of money as aforesaid, to be computed as is usual with the banking company in ordinary banking accounts with them, and also the lawful commission, charges or expenses incident to, or occasioned by, the transactions or matters between the bank and the co-obligor, and should indemnify and save harmless the banking company from all actions, suits and expenses, and all liability whatsoever, by reason of the transactions and matters, then the bond was to be void; provided that the principal moneys to be ultimately recovered on the bond were thereby limited not to exceed 250*l.*, and that the obligors or any of them should not be liable to pay, by virtue thereof, any greater principal sum than 250*l.*; but that the bond should be a continuing security to that amount, for the sums from time to time owing as aforesaid, exclusive of interest (to be computed as aforesaid), commission, cost, charges, and expenses :—

(*a*) *Ellis* v. *Emmanuel*, 1 Ex. D. 157; 46 L. J. Ex. 25; 34 L. T. 553; 24 W. R. 832. See also *Ex parte Midland Banking Company*, 38 L. T. 395; *Morrell* v. *Cowan*, 7 Ch. D. 151; *Heffield* v. *Meadows*, L. R. 4 C. P. 595; *Wood* v. *Priestner*, L. R. 2 Ex. 66, 282.

Held that the surety was liable on this bond only for 250*l.* principal moneys advanced, and interest accrued upon that sum; but not for any further principal sum advanced by the bank.(*b*)

R. and Company being about to open an account with the Union Bank, the defendant and one Black signed the following gurantee :—

"In consideration of the Union Bank agreeing to advance and advancing to R. and Company any sum or sums of money they may require during the next eighteen months, not exceeding in the whole 1,000*l.*, we hereby jointly and severally guarantee the payment of any such sum as may be owing to the bank at the expiration of the said period of eighteen months."

One thousand pounds was placed by the bank to the credit of R. and Company's drawing account, and R. and Company were debited with 1,000*l.* in a loan account. R. and Company from time to time drew cheques against and paid money to the credit of, their drawing account. Over 1,000*l.* was thus paid in by R. and Company, and they were not debtors on the drawing account when it was finally closed. The loan account remained unaltered. The bank sued the defendant for 1,000*l.* on the guarantee, and after the commencement of the action Black paid the bank 500*l.* in discharge of his liability. The defendant did not plead this payment :—Held, that the guarantee was a continuing one, and that the defendant's liability was not discharged by the payments made by R. and Company.(*c*)

Revocation.—It would appear that where there is a continuing guarantee for advances from time to time to be made to another person, the guarantee can be determined by the guarantor at any time, subject to the payment of anything then due under it.(*d*) Thus a guarantee for the space of twelve months for the due payment of all such bills as A. might discount for D. and Company, to the extent of 600*l.*, may be revoked and countermanded by

(*b*) *Meek* v. *Wallis*, 27 L. T. 650.
(*c*) *Laurie* v. *Scholefield*, L. R. 4 C. P. 622; 38 L. J. C. P. 290.
(*d*) *Burgess* v. *Eve*, L. R. 13 Eq. 450.

a notice given during the twelve months, although some discount may have been made and repaid before the notice.(*a*) This right to revoke proceeds on the principle that each advance constitutes a separate consideration, and that under such a guarantee the advances are not made in pursuance of a request made once and for all by the party who gives the guarantee, but in pursuance of a request supposed to be made by him from time to time as the advances are made, and that if before any particular advance is made the person giving the guarantee informs the person making the advance that he withdraws the guarantee, the advance is not made at his request, and he, therefore, is not liable for it.(*b*) Where, on the other hand, the consideration is not fragmentary but entire, as in the case of a person giving a guarantee to a firm that he will be responsible for the fidelity of some third party in consideration of their receiving him into their employ, there, inasmuch as the consideration for the guarantee is given once and for all, it cannot be revoked at will, but must continue until the services are ended,(*c*)—save only in the case where the employé has been guilty of dishonesty, when the surety, after giving notice to the employer, is entitled to withdraw from his guarantee, and to relieve himself from any further liability.(*d*)

SURETYSHIP GENERALLY.

Discharge of Surety—By Variation of Agreement.—The rule as to the effect of a variation of the original agree-

(*a*) *Offord* v. *Davies*, 31 L. J. C. P. 319; 12 C. B. (N.S.) 748; *Bradbury* v. *Morgan*, 31 L. J. Ex. 462. Such a guarantee would, it seems, in the absence of express provision be revoked as to subsequent advances by notice of the death of the guarantor: *Harriss* v. *Fawcett*, L. R. 8 Ch. 866; 42 L. J. Ch. 502; *Coulthart* v. *Clementson*, 5 Q. B. D. 44, 46; *In re Sylvester* [1895], 1 Ch. 573; *Lloyd's* v. *Harper*, 16 Ch. D. 290, 314; see also *Bank of Scotland* v. *Christie*, 8 Cl. & Fin. 214.

(*b*) See judgment of COTTON, L.J., in *Lloyd's* v. *Harper*, *supra*, p. 318.

(*c*) Nor is such a guarantee revoked by notice of the death of the guarantor: *Lloyd's* v. *Harper*, *supra*; *Calvert* v. *Gordon*, 3 Man. & Ry. 124.

(*d*) *Burgess* v. *Eve*, L. R. 13 Eq. 450; *Phillips* v. *Foxall*, L. R. 7 Q. B. 666, 678; *Sanderson* v. *Aston*, L. R. 8 Ex. 73.

ment between the principals in discharging the surety has in a modern case been stated to be as follows. If there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and if he has not consented to the alteration, although in cases where it is without inquiry evident that the alteration is unsubstantial, or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged; yet, if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the Court will not, in an action against the surety, go into an inquiry as to the effect of the alteration, or allow the question, whether the surety is discharged or not, to be determined by the finding of a jury as to the materiality of the alteration or on the question whether it is to the prejudice of the surety, but will hold that in such a case the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged.(*e*)

Time or Indulgence given to Principal.—Where the creditor has entered into a binding contract to give the principal debtor further time without the consent of the surety, the surety is discharged, provided the creditor has not, as he may do, expressly reserved his rights against him.(*f*)

(*e*) Per COTTON, L.J., in *Holme* v. *Brunskill*, 3 Q. B. D. 495, in which case, however, BRETT, L.J., disagreed as to the effect of the non-materiality of the alteration, holding that the surety is discharged where there has been a material alteration of some specific provisions of the agreement, but not otherwise. See also *Sanderson* v. *Aston*, L. R. 8 Ex. 73; 42 L. J. Ex. 621; *Wilson* v. *Lloyd*, L. R. 16 Eq. 60; *Polak* v. *Everett*, 1 Q. B. D. 669; 46 L. J. Q. B. 218; *Ward* v. *National Bank of New Zealand*, 8 App. C. 755; *Ellesmere Brewery Company* v. *Cooper* [1896], 1 Q. B. 75.

(*f*) *Davey* v. *Prendergrass*, 5 B. & A. 187; *Black* v. *Ottoman Bank*, 15 Moore, P. C. 472; *Boulor* v. *Mayor*, 19 C. B. (N.S.) 76; *Overend, Gurney and Company* v. *Oriental Financial Corporation*, L. R. 7 H. L. Cas. 348; *Swire* v. *Redman*, 1 Q. B. D. 536; *Bolton* v. *Buckenham* [1891], 1 Q. B. 278; *Bolton* v. *Salmon* [1891], 2 Ch. 48; *Rouse* v. *Bradford Bank* [1894], 2 Ch. 32; A. C. 586. To reserve a creditor's right against a surety there must be a distinct expression of intention to reserve it, although the surety need not be a party to the stipulation, nor

The following case will exemplify this :—

W. Jones gave the following guarantee to a bank, on behalf of Henry Bowers :

"HENRY BOWERS' MILL ACCOUNT.

"Please to open an account with, and honour the cheques of, Mr. H. Bowers on 'mill account,' for whom I will be responsible.

"W. JONES."

"*Carmarthen, January* 4, 1825."

W. Jones was an attorney, and the professional adviser of the bankers, and, at the time, had a banking account with them. The bankers, upon receiving the document, opened an account with Bowers, and made various advances to him up to February, 1827, when they ceased to advance to him. It was the course of business of the banking-house occasionally to take the acceptance of their customers for the balance appearing to be due on the face of their accounts, which were termed *covers;* and the same was also shown to be the practice of a neighbouring bank. Jones was proved to have sometimes been consulted by the bankers, as their professional adviser, with respect to these acceptances ; but it was not proved that he had personally any knowledge of the practice to require these bills as covers for overdrawn accounts.

In February, 1828, without Jones's knowledge or consent, the bankers took Bowers's acceptance, at three months, for the amount of their balance against him, and this bill was carried to the credit of his account, but was dishonoured at maturity.

In 1832, the bankers became bankrupt, and in an action by their assignees against Jones, commenced in 1833, it was adjudged that the bankers, by taking the acceptance, had given time to Bowers, the principal, and thereby had discharged Jones, the guarantor or surety.(a)

Where a surety guarantees a series of payments to be

even have notice of it ; *Overend, Gurney and Company* v. *Oriental Financial Corporation*, *supra ; Muir* v. *Crawford*, L. R. 2 H. L. Cas. Sc. 456 ; *Ex parte Charlton*. 36 L. T. 561.

(a) *Howell* v. *Jones*, 1 C. M. & R. 97. See also *Evans* v. *Bremridge*, 25 L. J. Chanc. 102.

made at stated periods, and time is given to the principal debtor in respect of one payment by a binding agreement, the surety is discharged from liability in respect of that payment, but not in respect of future payments.(*b*)

The acceptance by a bank of a fresh security without any binding engagement by them to give time to A., does not discharge the surety.(*c*)

Again, if there are two co-sureties and a further loan is made by the creditor to the principal, and the creditor takes an additional security for that and the former loan, and gives further time to the principal and one of the sureties, the other is discharged.(*d*) And if, after a right of action has accrued to the creditor against two or more persons, he is informed that one of them is a surety only, and after that he gives time to the principal debtor without the consent of the surety, the rule as to the release of the surety equally applies.(*e*)

An agreement with a *third* person to give further time to the principal debtor will not discharge the surety.(*f*)

In equity it was held that a surety was released in the case of a debt due under seal by a mere verbal agreement to give further time ;(*g*) and since the 17 & 18 Vict. c. 83, such an agreement has been made capable of being set up by way of equitable defence.

Non-disclosure and Fraudulent Concealment.—As to how far a person receiving a guarantee is bound to disclose the whole previous dealings between himself and his principal debtor, the law is found thus stated by Mr. Justice FRY in *Davies* v. *London and Provincial Marine Insurance Com-*

(*b*) *Croydon Commercial Gas Company* v. *Dickinson and Pollard*, 2 C. P. D. 46 ; 46 L. J. C. P. 157.

(*c*) *Clarke* v. *Birley*, 41 Ch. D. 422 ; *Bell* v. *Banks*, 3 M. & G. 258. See 7 H. L. Cas. 348, *infra* ; *Swire* v. *Redman*, 1 Q. B. D. 536.

(*d*) *Vyner* v. *Hopkins*, 6 Jur. 889, per KNIGHT BRUCE, V.C.

(*e*) Per Lord CAIRNS, in *Overend, Gurney and Company* v. *Oriental Financial Corporation*, L. R. 7 H. L. Cas. 348, 360.

(*f*) *Fraser* v. *Jordan*, 8 E. & B. 303. See *Clarke* v. *Birley*, 41 Ch. D. 422.

(*g*) See *Davey* v. *Prendergrass*, 5 B. & Ald. 187, 192.

pany:(a) "It has been argued here that the contract between the surety and the creditor is one of those contracts which I have spoken of as being *uberrimæ fidei*, and it has been said that such a contract can only be upheld in the case of there being the fullest disclosure by the intending creditor. I do not think that that proposition is sound in law. I think that, on the contrary, that contract is one in which there is no universal obligation to make disclosure; and therefore I shall not determine this case on that view. But I do think that the contract of suretyship is, as expressed by Lord WESTBURY in *Williams* v. *Bayley*,(b) one which 'should be based upon the free and voluntary agency of the individual who enters into it.' I think that principle especially applicable here, because there is no consideration in this case, as in many cases of suretyship, for the contract so entered into; and, therefore, I think, to use the language of Lord ELDON, in *Turner* v. *Harvey*,(c) it is a contract in respect of which a very little is sufficient. Very little said which ought not to have been said, and very little not said which ought to have been said, would be sufficient to prevent the contract being valid. It is one, furthermore, in which I think that everything like pressure used by the intending creditor will have a very serious effect on the validity of the contract; and the case is stronger where that pressure is the result of maintaining a false conclusion in the mind of the person pressed." The officers of a company, believing that the retention of money by one of their agents amounted to felony, directed his arrest. Certain friends of his came to the officers of the company and proposed to deposit a sum of money by way of security for any deficiency. On the same day the company was advised that the acts of the agent did not amount to felony, and the directions for the arrest were withdrawn. Later in that day the friends of the agent had

(a) 8 Ch. D. 469, 475; 47 L. J. Ch. 511.
(b) L. R. 1 H. L. 200, 219.
(c) Jac. 169, 178.

a second interview with the officers of the company, and agreed to deposit a sum of money as security for his defaults, no mention being made of the withdrawal of the directions for the arrest. The sum of money was afterwards deposited with trustees on an agreement for the security of the company. And it was held that the change of circumstances ought to have been stated to the intending sureties, and that the agreement must be rescinded, and the money returned to the sureties.(*d*)

Certain bankers advanced 2,600*l.* to A. upon the security of an indenture of mortgage to them of certain property of A., and also of a joint and several promissory note of the same date as the deed, in which a third party joined with A. as surety. At the time of this advance A., who had long been a customer, owed them 800*l.*, and it was arranged between him and the bankers, that this sum should be deducted from the 2,600*l.*, but neither by the recital in the mortgage deed or otherwise was the surety apprised that such was the case, and that recital moreover expressly, but falsely, stated that the entire interest in a 1,500*l.* policy of assurance, already deposited with the bankers, would, inasmuch as the 800*l.* had been repaid to the bankers, be available as collateral security for the 2,600*l.* The mortgage deed was prepared by the bankers' solicitor, and read over in his office to the surety and A. previously to its execution and to the surety's signature to the promissory note. The circumstances were held to constitute such a fraud in law as released the surety, although it was not suggested that any intentional fraud was imputable to the bankers personally.(*e*)

By the Creditor's not retaining Securities.—Thus it is a rule that a surety is entitled to the benefit of any security which the creditor has received for the debt, though he has received it after the contract of suretyship; and there-

(*d*) 8 Ch. D. 469, 473. See also *North British Insurance Company* v. *Lloyd*, 10 Exch. 523; *Hamilton* v. *Watson*, 12 C. & F. 109.
(*e*) *Stone* v. *Compton*, 5 Bing. N. C. 142.

fore, where the creditor has so dealt afterwards with such security, that on payment by the surety it cannot be given to him in the same condition as it was when the creditor first acquired it, the surety is discharged to the extent of that security.(a)

The defendant was surety for the repayment of a sum of money advanced by the plaintiff to the principal debtor. As a further security for the advance, the principal debtor deposited with the plaintiff a policy of life insurance. The principal debtor subsequently became bankrupt, the advance remaining unpaid, and the plaintiff proved against his estate for the full amount of the advance without valuing the policy of life insurance as a security, which was in consequence claimed by the trustee in bankruptcy as part of the bankrupt's estate. It was contended by the defendant in an action against him as surety, that by not valuing the policy, and so depriving him of the benefit of it, the plaintiff had discharged him from all liability as surety :—Held, that the omission to value the policy was at most a mere neglect or omission on the part of the plaintiff, and as such did not discharge the defendant from all liability as surety, but only to the extent of the value of the policy.(b)

Richard Cox was a banker in co-partnership with Messrs. Morrell, under the firm of Cox and Morrell. He was also engaged in a colliery business with one Davies, under the firm of Cox and Davies.

Cox and Morrell were in advance to Cox and Davies.

Richard Cox having applied to his partners for a further advance, it was agreed that they should advance a further sum upon his brother, John Cox, becoming security for the re-payment of 3,000*l.*

(a) *Campbell* v. *Rothwell*, 47 L. J. Q. B. 144; 38 L. T. 33. See also *Liquidators of Overend, Gurney and Company* v. *Liquidators of Oriental Financial Corporation*, L. R. 7 H. L. Cas. 348; *Merchants Bank of London* v. *Maude*, 18 W. R. 312.

(b) *Rainbow* v. *Juggins*, 5 Q. B. D. 138; 49 L. J. Q. B. 353; 28 W. R. 428.

John agreed, as surety for Richard, to execute a joint and several bond to James and John Morrell for 3,000*l.*, upon having a counter bond for the like sum from Cox and Davies to indemnify him.

A joint and several bond was executed by John but not by Richard; the counter bond was given by Cox and Davies, and further advances were made by the bank.

Some time after this, Richard ceased to be a partner in the bank.

The bankers were considered to have released the surety by neglecting to obtain the bond from the principal debtor Richard Cox.(*c*)

The acceptor of a bill of exchange knows that by his acceptance he does an act which will make him liable to indemnify any indorser of it who may afterwards pay it. The indorser is a surety for the payment to the holder, and having paid it, is entitled to the benefit of any securities to cover it deposited with the holder by the acceptor. He is so entitled, whether at the time of his indorsement he knew, or did not know, of the deposit of those securities. The surety's right in this respect in no way depends on contract, but is the result of the equity of indemnification attendant on suretyship.

A., a member of a firm, pledged his separate estate to a bank to secure to the bank the balance for the time being owing to the bank from the firm. Afterwards the firm accepted bills of exchange which were indorsed by B. to, and discounted for him by, the bank. The firm became bankrupt and the bills were dishonoured at maturity. The bank having demanded of B. payment of the amount due on the bills, B. claimed to be a surety for the firm in respect of the bills, and to be entitled as such surety to the benefit of the securities held by the bank:—Held, that B. was entitled to receive them.(*d*)

(*c*) *Bonser* v. *Cox*, 4 Beav. 379; *S. C.*, 6 Beav. 110.
(*d*) *Duncan, Fox and Company* v. *New South Wales Bank*, 6 App. Cas. 1, reversing 11 Ch. D. 88.

Again, a surety is released, to the extent of the value of goods assigned by the principal debtor, by the creditor's failing to register the assignment under the Bills of Sale Acts, and by his not taking possession when default was made in payment of interest, and when bankruptcy was to his knowledge impending.(*a*) So a creditor holding a mortgage for a guaranteed debt is bound to hold it for the benefit of the surety, so as to enable him on paying the debt to take the security in its original condition unimpaired.(*b*)

By Release of Debtor.—As by giving time to the principal debtor the creditor releases the surety unless he expressly reserves his rights against him, so does he release him by giving the debtor an absolute release of the debt, unless there is a reservation of the rights against the surety.(*c*) A surety is discharged by the principal creditor's becoming a party to a composition deed releasing the principal debtor,(*d*) unless there is an express reservation made against him,(*e*) because the effect of his doing so is to voluntarily discharge the principal debtor from any further liability. The principal debtor's obtaining an order of discharge in bankruptcy or liquidation, however, does not discharge the surety.(*f*)

A customer and another person as his surety signed a joint and several promissory note, payable to the bankers, to secure them, &c., and they afterwards executed a com-

(*a*) *Wulff* v. *Jay*, L. R. 7 Q. B. 756; 41 L. J. Q. B. 322.
(*b*) *Pledge* v. *Buss*, 6 Jur. (N.S.) 695.
(*c*) Where a creditor absolutely released his principal debtor and accepted a third party as full debtor in his stead, and the surety for the former debtor agreed to give a guarantee for the latter, and to continue his former guarantee until he did so, and then died without having given it; it was held in an action by the creditor against his executors that the former debt having been extinguished by the release, the remedy against the deceased was gone. *Commercial Bank of Tasmania* v. *Jones* [1893], A. C. 313.
(*d*) *Green* v. *Wynn*, L. R. 4 Ch. 204; *Leathley* v. *Spyer*, L. R. 5 C. P. 595; *Kearsley* v. *Cole*, 16 M. & W. 128.
(*e*) *Bateson* v. *Gosling*, L. R. 7 C. P. 9; *Cragoe* v. *Jones*, L. R. 8 Ex. 81.
(*f*) *Megrath* v. *Gray*, L. R. 9 C. P. 216; *Breslauer* v. *Brown*, 3 App. Cas. 672; *Ex parte Jacobs, In re Jacobs*, 10 Ch. 211; *Ellis* v. *Wilmot*, L. R. 10 Ex. 10; *Ex parte Agra Bank, In re Barber*, L. R. 9 Eq. 725.

position deed, whereby, in consideration of four shillings in the pound, the bankers and other creditors released the customer from the payment of the debts respectively set opposite their names, the amount of the promissory note being set opposite the bankers' names; the deed contained an express clause that it should not operate to invalidate, prejudice or affect any bonds, bills, notes, or other securities, joint or several, &c., as to the claim against any such surety; the deed was held clearly not to release the surety, there being no fraud on the other creditors, since, the clause appearing on the face of the deed, all who executed it must be taken to have been aware of, and agreeable to, the reservation of the rights against the surety.(*g*) It must be remembered, as previously stated, that to reserve a creditor's right against a surety there must be a distinct expression of intention to reserve it.(*h*)

Cases of composition with creditors frequently occur in which the interests of bankers, upon guarantees, are deeply concerned, and the form in which such guarantees are expressed ought always to be such that the bankers should be secured of a priority of repayments of advances over the creditors under the composition deed. For this purpose it is necessary that the guarantee should be made not conditional to pay on failure of the traders to repay, but absolute. An illustration will be found in the following case, in which the bankers sued the trustees under the composition deed to recover the amount of their advances.

Carr and Company, being insolvent, compounded with their creditors by agreeing to pay them a composition of seven shillings and sixpence in the pound, in three instalments, and to execute a conveyance of their real and personal estate to certain trustees, in trust to permit them, Carr and Company, to carry on the business, subject to the control of the trustees, and to pay thereout to the creditors the

(*g*) *North* v. *Wakefield*, 13 Q. B. 536.
(*h*) See *ante*, p. 209.

three instalments; and, in case of full payment thereof, to re-convey and re-assign the estate to Carr and Company; but upon default of such payment, then in trust to sell, and, after deducting out of the proceeds interest, costs, and amount of mortgages, &c., to divide the remainder amongst themselves and the other creditors.

Carr and Company continued, accordingly, to carry on the business, and opened an account with a banking company, from whom they obtained large advances. The bank applied to, and obtained from, the trustees the following guarantee:—

"Carr and Company, having assigned over all their real and personal estate to us in trust for securing a composition of seven shillings and sixpence in the pound to their several creditors executing such deed, and it being necessary to open a banking account for the purpose of carrying on the said trade, in order that the stock and goods on hand may be wrought up and converted into money, for the purpose of paying such dividends; and you having, at our request, consented to open a banking account for that purpose and to make advances on such account on the credit of the names of Carr and Company, or of any person or persons for the time being carrying on that concern: we do hereby promise and engage that any sum or sums of money to become due to you or to the said banking company, in respect of such account, shall in the first instance, be paid to you out of the net proceeds of the trust estate, so far as the same will extend to pay."

Further advances were made by the bank to Carr and Company subsequently to this guarantee.

The trustees subsequently sold the property of Carr and Company, under the provisions of the composition deed, and the proceeds were insufficient to pay the creditors the composition of seven shillings and sixpence in the pound; the Court held, that the meaning of the guarantee was not that the trustees should be liable to the bank only out of the proceeds realized from the estate of Carr and Company

after payment of the composition of seven shillings and sixpence to the creditors, but that they were liable, in the first instance, to repay, out of the proceeds, the whole amount of the advances made by the bank to Carr and Company, as well before as after the guarantee, and the guarantee was held to extend to advances made before it was given, notwithstanding the objection was pressed upon the Court, that the recital, stating it to have become necessary, to *open* an account, &c., pointed only to future advances.(*a*)

A surety who guarantees the payment of an instalment under a composition resolution, is not released by the debtor's being subsequently adjudicated bankrupt at the suit of creditors who are not bound by the resolution.(*b*)

Release of Co-surety.—In a suit against one of five joint and several sureties it appeared that the plaintiff had without the defendant's knowledge and consent released another of the sureties "from all debts due by him to the plaintiff at this date." Held, that the plaintiff could not recover, and that the legal effect of the release could not be modified by evidence of verbal negotiations prior to the release, for the purpose of showing an agreement superseded by the release to reserve rights against the sureties.(*c*)

Payment.—Payment by the principal debtor discharges the surety and part payment does so *pro tanto*, but not a payment that has to be regarded as being a fraudulent preference.(*d*)

Promissory Notes as Guarantees.—A guarantee is sometimes given in the form of a promissory note signed by

(*a*) *Wilson* v. *Craven*, 8 M. & W. 584, 595.
(*b*) *Glegg* v. *Gilbey*, 2 Q. B. D. 209; 46 L. J. Q. B. 325.
(*c*) *Mercantile Bank of Sydney* v. *Taylor* [1893], A. C. 317. An unsatisfied judgment against one joint surety for a cheque given by him alone for the debt is not a bar to an action against the other joint surety on the original contract; the cause of action on the cheque and on the guarantee not being the same: *Wegg-Prosser* v. *Evans* [1895], 1 Q. B. 108.
(*d*) See *Petty* v. *Cooke*, L. R. 6 Q. B. 790; *Walwyn* v. *St. Quentin*, 2 Esp. 515.

the guarantor; but in such cases the instrument will often be found to operate as an agreement, and must consequently be stamped accordingly, in order to be made effectual.

Thus, where two persons, as guarantors or sureties for a customer of a bank, signed together with him an instrument in the following form :—

"*We jointly and severally promise to pay the sum of* 100*l.* *to the London and Lindsey Banking Company, or their order, on demand, with interest.*"

And on the back of the document signed this indorsement :—

"*The within note is given for securing floating advances from the said banking company to the customer, with interest from the respective times when such advances have been or may be made, together with commission, stamps, postages, and all usual charges and disbursements, not exceeding in the whole, at any time, the sum of* 100*l.*"

In an action by the bank against one of the two sureties on the note, to which there was a plea of the Statute of Limitations, and payments were shown to have been made by the customer, in reduction of the balance due on the banking account, within six years before action, the Court held, that it was essential to the plaintiff's case to take notice of the indorsement, in order to point the payments to the note, and to show it to be a security for the floating balance, *for which purpose it was an agreement*, and required to be stamped.(*a*)

If the security or guarantee taken was in the form of a joint and several promissory note, payable to the bankers on demand, and signed by the customer and the guarantor for a given sum, it was at law no defence to an action against the guarantor on the note to allege that he made the note as a surety, and for the accommodation of the customer, with the knowledge of the bankers, and that

(*a*) *Cholmeley* v. *Darley*, 14 M. & W. 344. But *quære* whether this indorsement was anything more than an explanation of the consideration.

they, after the note became due and payment had been demanded of the customer, being holders, agreed, without the consent or leave of the guarantor, to give time to the customer, unless he can show that there was a specific agreement on the part of the bankers to take the note from the guarantor as a surety only.(b) In equity, however, such a defence was good; and, consequently, in law might be set up by way of *equitable plea*.(c)

It is not uncommon for joint stock banks to take a joint and several promissory note, signed by the customer and other parties, the latter of whom are intended to be sureties for the former, in order to secure any balance that may become due to the bank on his account with them, or to secure advances made by them to him.

It is very material that the persons having the management of the business or of the accounts of the bank should be satisfied that there is nothing in their deed of settlement to prohibit any arrangement of this nature. Many deeds of settlement contain stringent provisions to prevent the funds of the company being advanced, or risked upon merely personal security.

Appropriation of Funds.—Again, as may be seen from the following case, a continuing guarantee may be discharged by an appropriation of funds of the surety in the hands of the creditor.

A. and Company, bankers, advanced 2,000*l*. to B., a customer, by placing it to the credit of his general current account, and took as security a series of ten promissory notes, maturing at the rate of one per week, during a period of ten weeks. C., as security for B., gave a written undertaking that, if the notes were not paid, he would

(b) *Manley* v. *Boycot*, 2 El. & Bl. 46; *Price* v. *Edmunds*, 10 B. & C. 578; *Strong* v. *Foster*, 17 C. B. 201. But see *Hall* v. *Wilcox*, 1 M. & Rob. 58.

(c) *Davies* v. *Stambank*, 6 De G., M. & G. 679; *Hollier* v. *Eyre*, 9 C. & F. 45; *Strong* v. *Foster*, 25 L. J. C. P. 106; *Oriental Finance Corporation* v. *Overend and Gurney*, L. R. 7 Ch. App. 142; *Greenough* v. *McClelland*, 30 L. J. Q. B. 15.

secure the debt by a mortgage upon property of his own. Moneys were paid into B.'s account more than sufficient to meet the notes if they had been so applied, but as the account was at the same time largely drawn upon, it was at the dates of the maturing of the notes constantly overdrawn:—Held, that A. and Company, having received moneys which they might have applied to the satisfaction of the notes, were bound so to have applied them to the relief of the surety before applying them to the liquidation of the current account, and that the surety was consequently discharged.(*a*) There is, however, no invariable rule that all payments made subsequently to giving a bond by a borrower and sureties to a bank are to be applied in immediate and final liquidation of the sum named in it, or of the first items in the borrower's debit: or that if the borrower after the giving of the bond, on a long course of transactions, be for a time in advance to the bank, the bond is thereby satisfied.(*b*)

It may, in default of express stipulation, be inferred from the language and conduct of the parties after execution of the bond, that the intention was for the bond to stand as a continuing security, in which case the rule of application of payments would not apply.(*c*)

(*a*) *Kinnaird* v. *Webster*, 10 Ch. D. 139; 48 L. J. Chanc. 348; 39 L. T. 494; 27 W. R. 212. See also *Browning* v. *Baldwin*, 40 L. T. 248.

(*b*) *Henniker* v. *Wigg*, 4 Q. B. 792, followed in *City Discount Company* v. *McLean*, L. R. 9 C. P. 699; 37 L. J. Ch. 97.

(*c*) *Henniker* v. *Wigg*, *supra*.

CHAPTER XXIII.

GUARANTEES FOR GOOD CONDUCT OF CLERKS, ETC.

WITH respect to guarantees for the good conduct of clerks of bankers, a point which has already been adverted to,(*d*) namely, whether the guarantee that is taken is in such a shape as to stand good in case of a change in the members of the banking house, arises more frequently in cases of guarantees for the fidelity of clerks than in those of guarantees for the repayment of advances to customers, and, therefore, requires to be more fully developed.

Change of Firm.—In considering this subject the Courts are guided by the intention of the parties.(*e*) This is mostly discoverable only from the expressions they have used in the instrument of guarantee. In other words, it is most important for the security of bankers that the language used should clearly and undeniably demonstrate the intention that the guarantor, whether he undertakes for the good conduct of the clerk during a limited or an unlimited period of time, should be bound to the *banking house*, not to the persons who are the members of the establishment at the date of the guarantee ; because, in case the guarantor is only bound in the latter way, upon any change in the partnership, by death, by retirement, or by taking in fresh partners, the new partnership might find themselves unable to enforce the obligation.

(*d*) *Ante*, p. 202.
(*e*) See also 19 & 20 Vict. c. 97, s. 4.

The following is an illustration of what has just been said as to the effect of a change of partnership.

A guarantor executed a bond, whereby he undertook to be responsible to A. for the fidelity of a clerk, so long as he should continue in A.'s service as clerk. A. took a partner, and brought an action on the bond, and assigned as a breach that the clerk had received money on account of the partnership, and not paid it over to the partners; but A. was not permitted to recover, the Court saying that when A. took a partner there was an end of the obligation; that the condition was confined to A. alone, and the breach assigned was not within the condition, and there was nothing to show the guarantor to have intended to be bound for the clerk's fidelity to any other person than A.(a) So, also, when a partner retired from the firm, the surety was discharged, even although the bond was with the partners and their survivors.(b)

It seems, therefore, to be the law that unless it appears that the intention was to secure the good conduct while serving the *banking house* as distinguished from the individual partners, a change in the firm will release the surety.(c)

In connection with this class of cases may be here mentioned one which can, however, in general only be applicable in instances where a banking house is conducted by a single person, without partners.

Where a bond was taken that a clerk should serve faithfully, and account for all money, bills, notes, &c., which he should receive, &c., to the banker and his executors, administrators and assigns, it was held that such bond did not make the surety liable for money, &c., received by the

(a) *Wright* v. *Russel*, 3 Wils. 530; 2 W. Bl. 934.
(b) *Cambridge University* v. *Baldwin*, 5 M. & W. 580.
(c) See, also, *Barclay* v. *Lucas*, 3 Dougl. 321; 1 T. R. 291 n; *Chapman* v. *Beckinton*, 3 Q. B. 722; *Metcalf* v. *Bruin*, 12 East 400, and *Wilson* v. *Craven*, 8 M. & W. 584.

clerk in the service of the executors, &c., who continued the business and retained him in the same employment.(*d*) This case turned upon the intention, which was held to be to guarantee the service to the testator and no longer, and must be considered with reference to the statutory enactment (passed since its date) mentioned above.(*e*)

In a case where a bond was given to guarantee to a company not incorporated the faithful services of a clerk, and the bond was made to and with trustees on behalf of the body: the Court held, construing the instrument with regard to the obvious intention of the parties, that it might be sued upon by the trustees at any time during the continuance in the service of the actual body of persons carrying on the same business under the same name, notwithstanding any intermediate change of the original holders of the shares, either by death or transfer.(*f*)

So where a joint-stock banking company had been established under the 7 Geo. 4, c. 46, and a guarantee was given to it, and then, upon a considerable accession of proprietors and capital, and an increase in the number of directors, the company took another name, but was not shown to differ in its constitution, but remained the same bank, though with a different name: it was held, that its public officer might sue and recover upon the guarantee given to the former establishment.(*g*)

Another point to be considered is, that a guarantee for the faithful services of a clerk, given at a time when his employment comprises a certain routine of duties, will not extend to cover other or additional duties that may be imposed on or accepted by him; thus if a clerk to a bank, for whose good conduct *as clerk* a guarantee has been

(*d*) *Barker* v. *Parker*, 1 T. R. 287; but compare *per* Lord ELLENBOROUGH, C.J., *Strange* v. *Lee*, 3 East 490. Lord MANSFIELD, C.J., 1 T. R. 295, distinguishes *Barclay* v. *Lucas*, by observing that there the same trade was carried on by the original masters in the same manner, and the only difference was the introduction of a new partner.

(*e*) See *ante*, p. 203.

(*f*) *Metcalfe* v. *Bruin*, 12 East, 400.

(*g*) *Wilson* v. *Craven*, 8 M. & W. 584.

given, is made *manager*, and it is *shown conclusively that he ceased to be clerk when he became manager*, so that no breach of the bond could have happened after he became manager, that will be an answer to an action by the bankers on the bond against the surety, founded on misconduct as manager.(*a*)

It is scarcely necessary to observe that the conduct, which amounts to a default on the part of the clerk, and which renders the surety liable upon his undertaking, must be some act or omission, some malfeasance or non-feasance, within the scope of the duties appertaining to the situation he fills.

A clerk of a provincial bank (in Devonshire), who was sent by the manager, at the request of a customer, to his residence, about eleven miles from the bank, in order to receive a large sum of money, to be placed to the customer's account with the bank, and who, casually, on his way back, lost the money out of his pocket, was held to have received the money in the course of his employment as clerk; and although the jury found it not to be the custom of bankers in that part of the country, to send for their customers' money as above stated, a surety, who had guaranteed the bank that the clerk "should well and faithfully serve them as a clerk, and should not cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with any of the books, papers, writings, stamps, cash, bills of exchange, promissory notes or other property of the bank, or of any of the customers, which should be deposited in his hands, or intrusted to his custody or possession, or come to his care, custody or possession," was responsible to the extent of the moneys lost.(*b*)

The same would be the decision in case of the payment of a cheque, or the receipt of money, *after banking hours*,

(*a*) *Anderson* v. *Thornton*, 3 Q. B. 271; and see *Skillett* v. *Fletcher*, L. R. 1 C. P. 217; 2 C. P. 469.

(*b*) *Melville* v. *Doidge*, 6 C. B. 450.

or of sending the clerk to London on a sudden emergency, to obtain funds, or the like.(c)

The fact of a clerk having received into his personal possession a sum of money, and having lost it, is strong evidence of negligence; but it would have been an answer to the action above referred to, to have shown that the loss had been occasioned by robbery before the clerk could have got back to the bank, and without his default.(d)

The reason for taking such security is not only the obvious one, that, in case of any embezzlement by the clerk, the banker may have the means of protecting himself against the loss thereby caused, but also that he may have the same protection, in case of any loss arising from the merely careless or thoughtless inattention to his duty of the clerk, in which case, without such security, the loss must ultimately fall on the banker, assuming the clerk to be unable to make it good.(e)

Evidence.—In cases of guarantees or securities of any kind, taken for the good behaviour of clerks, it is material to bear in mind that whatever is evidence available against the principal, is available against the surety.

Thus, where bankers sued the obligor of a bond given for the fidelity of a clerk, entries of receipts of money by the clerk in the books kept by him in discharge of his duty as clerk to them were held to be, after his death, evidence against the surety of the fact of his having received the moneys therein mentioned, it being part of his guaranteed duty to keep those books.(f)

Discharge of Guarantor.—As has been already stated,(g) a person giving a guarantee to a firm that he will be responsible for the faithful services of a servant, cannot revoke it

(c) See 6 C. B. 454.
(d) See *Walker* v. *British Guarantee Association*, 21 L. J. Q. B. 257; 18 Q. B. 277.
(e) *Rogers* v. *Kelly*, 2 Camp. 123.
(f) *Whitnash* v. *George*, 8 B. & C. 556.
(g) *Ante*, p. 208.

after once the consideration for that guarantee has been performed: that is to say, when once the service has commenced; nor will his death act as a revocation of the guarantee, or discharge the guarantor. Thus, in May, 1863, a father, on the occasion of the admission of his son as an underwriting member of Lloyd's, addressed to the managing committee of that body a letter, by which he held himself responsible for all his son's engagements in that capacity. Lloyd's was then a voluntary association, governed by certain bye-laws, under which a person once admitted a member could not be excluded from membership, except in the event of his bankruptcy or insolvency. The association consisted of underwriting members, non-underwriting members, and subscribers. The practice of the underwriting members was to underwrite policies of marine insurance for the benefit of various owners of property, both members of the association and outsiders; but the policies with outsiders could only be effected through the agency of insurance brokers, who were either members of, or subscribers to, the association. The association as such incurred no liability on the policies underwritten by its members.

Death.

In 1871 the society was incorporated by Act of Parliament, all the rights of the committee on behalf of the members being vested by the Act in the corporation. In 1876 the father died, and notice of his death was shortly afterwards given to Lloyd's. In 1878 the son became bankrupt, and thereupon ceased to be a member of Lloyd's:—Held, by the Court of Appeal (affirming the decision of FRY, J.), that the guarantee was not determined by the death of the father, or by the notice of it, but that his estate was liable in respect of engagements contracted by the son after his death.(a)

Employer's Neglect.—If, however, in the case of a continuing guarantee for the honesty of a servant, the master

(a) *Lloyd's* v. *Harper*, 16 Ch. Div. 290; *In re Sherry*, 25 Ch. D. 692; *Coulthart* v. *Clementson*, 5 Q. B. D. 42; *In re Silvester* [1895], 1 Ch. 573.

discovers that the servant has been guilty of acts of dishonesty in the course of the service to which the guarantee relates; and if, instead of dismissing the servant as he may do at once and without notice, he choose to continue him in his employ, the surety may call upon the master to dismiss him, and if the master still employ him without the consent of the surety, express or implied, he cannot have recourse to the surety to make good any loss which may arise from dishonesty of the servant during the subsequent service.(*b*) Similarly, the surety, after the servant has been guilty of dishonesty, may give notice thereof to the master and withdraw from his guarantee and relieve himself from any further liability.(*c*)

Non-disclosure.—What has been said in the previous chapter as to the duty of the employer to disclose any material fact likely to make the surety abstain from entering into the guarantee applies equally to the form of guarantees now under discussion, and to which, therefore, the reader must be referred for information.(*d*)

Alteration.—Again, any variation in the agreement to which the surety has subscribed, that is made without his knowledge or consent, and which may prejudice him, or which may amount to a substitution of a new agreement for a former agreement, even though the original agreement may, notwithstanding such variation, be substantially performed, will discharge the surety.

This may be illustrated by the following example: where a surety guaranteed the faithful and honest conduct of a clerk, who was paid by salary, and his employers, some time afterwards, changed this part of their arrangement with him, and paid him by means of a commission, which amounted to more than his former salary: it was

(*b*) *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; 41 L. J. Q. B. 293; 27 L. T. 231; *Sanderson* v. *Aston*, L. R. 8 Ex. 73.
(*c*) *Burgess* v. *Eve*, L. R. 13 Eq. 450.
(*d*) See p. 211.

held, that the surety was discharged by reason of the alteration.(*a*) Again, A. became guarantor of the good conduct of a clerk in a bank; and the clerk was subsequently appointed to a better situation in a branch of the bank, and A. extended his guarantee to the conduct in this new situation. The clerk afterwards undertook, on having his salary raised, to become liable to one-fourth of the losses on discounts (no communication of this new arrangement being made to A.), and then allowed a customer to overdraw, whereby the bank suffered loss. A. was held not to be liable for this loss to the bank, though it was within the terms of his original guarantee, because the fresh arrangement was the substitution of a new agreement for the former one and A. was thereby discharged.(*b*)

(*a*) *North Western Railway Company* v. *Whinray*, 10 Exch. 77. When the condition of the bond did not contain any stipulation that the same salary should be continued, either express or implied, the guarantor would not be discharged by a reduction of the salary. *Frank* v. *Edwards*, 8 Exch. 214; explained, 10 Exch. 81, 82.

(*b*) *Bonar* v. *Macdonald*, 3 H. L. Cas. 226.

CHAPTER XXIV.

CRIMINAL ACTS OF SERVANTS, ETC., AND LIABILITY OF EMPLOYERS THEREFOR.

Larceny and Embezzlement by Clerks or Servants.—By 24 & 25 Vict. c. 96, s. 67, it is enacted, that whosoever, being a clerk or servant, or being employed for the purpose of or in the capacity of clerk or servant, shall steal any chattel, money or valuable security,(*c*) belonging to or in the possession or power of his master or employer, shall be guilty of felony. On conviction such a person is liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years; or he may be imprisoned with or without hard labour for any term not exceeding two years.(*d*) And as regards embezzlement it is enacted by section 68, that whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security which shall be delivered to, or received or taken into possession by him for, or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer, otherwise than by the actual possession of his clerk, servant, or other person so employed. On conviction such a person is liable at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, or to be imprisoned with or without hard labour for any term not exceeding two years.

(*c*) For definition of "valuable security," see section 1.
(*d*) 24 & 25 Vict. c. 96; 54 & 55 Vict. c. 69, s. 1.

By section 73 it is provided that whosoever, being an officer or servant of the Governor and Company of the Bank of England or of the Bank of Ireland, and being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or with any security, money, or other effects of or belonging to the said governor and company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or any security, money, or other effects of any other person, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, shall secrete, embezzle, or run away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects as aforesaid, or any part thereof, shall be guilty of felony. On conviction such a person is liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.(*a*)

The crime of larceny differs but little from that of embezzlement, the chief distinction being that in order to constitute the former crime the property in respect of which the illegal act is alleged to have been committed must be proved to have been in the actual or legal possession of the prosecutor, whereas in the case of embezzlement it is not necessary to prove that fact.(*b*)

However, the distinction between the two crimes is practically immaterial as the punishment is the same in either case, and on an indictment for embezzlement a prisoner may be found guilty of larceny, and *vice versâ*.(*c*) By the Summary Jurisdiction Act, 1879 (42 & 43 Vict.

(*a*) 24 & 25 Vict. c. 96; 54 & 55 Vict. c. 69, s. 1.

(*b*) *R.* v. *Murray*, 1 Mood. C. C. 276; 5 C. & P. 145; *R.* v. *Walls*, 19 L. J. M. C. 192.

(*c*) Section 70.

c. 49), s. 11, a person between the ages of twelve and sixteen, charged with larceny or embezzlement (or an attempt) as a clerk or servant may with his consent be dealt with summarily, and if found guilty may be fined to the extent of ten pounds, or be imprisoned with or without hard labour to the extent of three months, &c. And by section 12 of the same Act an *adult*, *i.e.*, a person of the age of sixteen or upwards charged with larceny or embezzlement (or an attempt) as a clerk or servant, may, provided in the opinion of the court the value of the property in respect of which the offence is alleged to have been committed does not exceed 40*s*., and the court thinks proper and he himself consents to be summarily dealt with, be so dealt with; and if found guilty be fined up to the sum of 20*l*., or be imprisoned with or without hard labour for any term not exceeding three months. As regards this section, however, it is provided that if the offence is one which by reason of a previous conviction on an indictment of the person charged is punishable with penal servitude the court shall not deal summarily with the act.(*d*)

If a clerk commit an embezzlement on the bank, and his father, in order to cover his defalcations, transfers stock into the name of the banker, this is compounding a felony to prevent a prosecution, and it seems that the value of the stock cannot be recovered, nor will the stock be ordered to be re-transferred.(*e*) But where a clerk in a banking company embezzled a large sum of money of his employers, and before his conviction he deposited the deeds of some real estates with the company, and directed a transfer of certain policies of assurance on his life to be made to the company, as a security, so far as they would extend for the money taken, and the company afterwards successfully prosecuted him for the embezzlement to conviction: it was held, that the money taken was a debt due from the felon to the company, and a good consideration

(*d*) See section 14.
(*e*) *Claridge* v. *Hoare*, 14 Ves. 59.

for the securities given by him to the company, and that the company was entitled to realize them.(*a*)

Civil Remedy.—An employer is liable in a civil action brought by a third person against him for the criminal act of his clerk committed in the course of his employment, but not if the act done is inconsistent with the course of his employment; therefore a banker would be liable to his customer for any loss to the latter occasioned by the fraud or negligence of the clerk or servant in the employ of such banker and committed in the course of such employment.(*b*)

Where an injury amounts to an infringement of the civil rights of an individual, and at the same time to a felonious wrong, it seems that a cause of action arises immediately upon the commission of the offence, but it is said it cannot be enforced till the injured party has fulfilled his public duty and brought or endeavoured to bring the felon to justice.(*c*) In an action against a master for the criminal act of his servant, the defence that the act complained of amounted to a felony cannot be maintained.(*d*)

(*a*) *Chowne* v. *Baylis*, 31 L. J. Ch. 757; 31 Beav. 351.

(*b*) *Coleman* v. *Riches*, 24 L. J. C. P. 125.

(*c*) See cases discussed in *Wells* v. *Abrahams*, L. R. 7 Q. B. 557. See also *Midland Ins. Company* v. *Smith*, 6 Q. B. D. 561. See also *Ex parte Ball, Re Shepherd*, 10 Ch. D. 673, and cases there mentioned.

(*d*) *Osborn* v. *Gillett*, 8 L. R. Ex. 88; 42 L. J. Ex. 53.

CHAPTER XXV.

BANKERS GIVING SURETIES AS TREASURERS.

We will in this chapter advert to the cases in which bankers may be required to find sureties upon their appointment as treasurers to public bodies.

A., B. and Company, entered into a joint and several bond, for the faithful performance by A., of his duties as treasurer of a poor law union, in receiving, &c., moneys, &c. A. and another person were bankers, and A. had, in fact, never been in the exclusive receipt of the moneys of the union, which were paid into the bank, the overseers of the parishes constituting the union having been directed by the board of guardians, in their printed contribution warrants, "to pay to Messrs. Brodie and Company," and the cheques drawn by the board requiring A. and his partner to pay, &c.

The Court held it to be an established principle, that for moneys paid to two or more parties the surety for one is not liable; and, therefore, that if a person is surety for another, for the due accounting for moneys received by him, the receipt of moneys by that person and his partner is not the same as the receipt by him alone, because the surety may be willing to be accountable for one individual, but not for him and his partner, and a payment to one partner is a payment to both. Here the board drew cheques on the banking firm, treating them as their joint treasurers, and from that it was inferred that they agreed to the moneys being paid into the bank, to their credit, just as any other customer. Hence, when the bank failed, with a balance due to the union in its hands, the sureties were held not to be liable, and a sum equal to the above balance, having been paid to the board of guardians by

one of them in ignorance of the facts was held to be recoverable.(a)

Where the guardians of a poor law union took a bond with sureties for the honest and faithful performance of his duties by a banker appointed the treasurer of the union, one of which duties was, according to the regulations of the Poor Law Board, to pay out of any moneys of the guardians in his hands all orders drawn by them on him; and the guardians took the amount of several orders partly in money, partly in bank notes of the banker himself, and partly in a draft upon the banker's correspondents in London, and then the bank stopped payment, the guardians having the notes in their hands, either having never parted with them or holding them on their being returned after the stoppage by persons to whom they had been paid away, the Court held, that the sureties were not liable: for the guardians had conclusively elected to treat the orders as paid, and the notes were taken at their peril; and the drafts had been given merely for their convenience.(b)

A person became surety to the guardians of a poor law union by a bond, conditioned that the treasurer of their union should discharge the duties of his office "by receiving all moneys tendered to be paid to the board of guardians, by paying out of the moneys in his hands of the guardians all orders drawn on him on their behalf," and by paying over to the guardians all balances, moneys, &c., due to the union, &c. The treasurer, who was a corn factor, had extensive dealings in corn, and open accounts in trade with the overseers of several of the townships who were farmers. No money was received from these townships, but it was the practice of the treasurer to debit the overseers in his trade account with the amount of the poor rate ordered by the guardians to be paid, and then to debit himself with the amount as paid to him as treasurer.

(a) *Mills* v. *Alderbury Union*, 3 Exch. 590; 18 L. J. Ex. 252.

(b) *Lichfield Union* v. *Greene*, 26 L. J. Exch. 140; 1 H. & N. 884. In such case the guardians are left to prove against the estate of the bankrupt banker on the notes and draft. S. C.

His accounts were audited half-yearly, and the credits in corn were allowed by the auditors as payments in money. At the last audit, the auditors found that the sum of 239*l.* 1*s.* 10*d.* was due to the guardians, and the Exchequer Chamber held that the surety was liable, inasmuch as between the treasurer and the overseers money had in effect passed.(*c*)

As regards evidence of the liability of the guarantor in these cases, we may point out—

1. That an account, delivered by a clerk, cashier, &c., charging himself, is evidence against his surety.

2. That, in case such account is made out by the clerk, and he continues to receive payments on account of the banker, and subsequently pays in moneys or takes credit for salary or disbursements, those payments are not necessarily to be first applied to extinguish the previous balance, when the subsequent receipts are equal in amount to the payments.(*d*)

(*c*) *Pattison* v. *Bedford Union*, 1 H. & N. 523.
(*d*) *Lysaght* v. *Walker*, 5 Bligh (N.S.) 1.

CHAPTER XXVI.

APPROPRIATION OF PAYMENTS.

WHERE a customer has a running account with a bank, the balance of which is sometimes for him and at other times against him, the question often arises, how are the payments by the bankers to be applied?

Thus, in the case of a banking partnership, where one partner dies, and the customer goes on dealing with the bank as before, there being no new account nor any settlement made, and then the banking-house becomes bankrupt, the account at the death of the partner being about 1,700*l.* in the customer's favour, but being afterwards and before the bankruptcy reduced by payments made by the bankers, on his account, to about 450*l.* in his favour; but again showing a balance for him exceeding the former amount of 1,700*l.*, at the time of the bankruptcy;—are the payments made, subsequently to the partner's death, by the survivors to be applied in reduction of the balance due to the customer at that period, so as to discharge the estate of the deceased partner *pro tanto*, or are they to be considered as exclusively parts of the dealings between the survivors and the customer?

Now this question has been settled, once for all, by Sir WILLIAM GRANT, Master of the Rolls, in a decision which has been universally followed and acted upon; and in the case of a banking account where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence, the rule may be stated to be as follows:—presumably, it is the sum first paid in that is first paid out, and it is the first item on the debit side of the account that is discharged or reduced by the first item on the credit side.

Indeed, this is the principle on which all accounts current, and especially cash accounts, are settled ; and any other mode (as the Master of the Rolls shows) would lead to extravagantly unreasonable results.(a)

If the customer intended that this usual mode of dealing should be altered or departed from in any way, it is incumbent on him to signify his intention to that effect to the bankers, for the rule in *Clayton's Case* is not applicable when it can be gathered, either from the course of dealings between the parties or from the debtor when making the payment, that such rule is not intended to be applicable.(a)

Lord SELBORNE in *Sherry's Case*, referred to below, has stated the principle of *Clayton's Case* to be as follows : " Where a creditor having a right to appropriate moneys paid to him generally, and not specifically appropriated by the persons paying them, carries them into a particular account kept in his books, he *primâ facie* appropriates them to that account, and the effect of that is that the payments are *de facto* appropriated according to the priority in order of the entries on the one side and the other of that account."

In order then that the rule in *Clayton's Case* may apply, there must be one continuing account, for if the continuance of the account is broken, as by closing the old account and opening a new and distinct one, the rule ceases to apply ; therefore, in the absence of any special agreement between the debtor and creditor to the effect that a particular payment should be appropriated to meet a particular debt, the creditor is entitled to elect as to the order of appropriation. A good example of the right to elect occurs in *Sherry's Case*, the facts being shortly as follows :—S. guaranteed the account of T. at a bank by

(a) *Clayton's Case*, 1 Mer. 608—610, 611 ; *City Discount Company* v. *McLean*, L. R. 9 C. P. 692 ; 43 L. J. C. P. 344 ; 30 L. T. 883 ; *Ex parte Smith*, 25 W. R. 760. The customer has a right to resort for payment of what is due to him out of the estate of a deceased partner to that estate, without regard to the state of the account, as between the deceased and the surviving partners. *Devaynes* v. *Noble*, Clayton's Case, 1 Mer. 575.

two guarantees, one for 150*l.*, the other for 400*l.* By the terms of the guarantees the surety guaranteed to the bank "the repayment of all moneys which shall at any time be due from" the customer "to you on the general balance of his account with you;" the guarantee was moreover to be "a continuing guarantee to the extent at any one time of" the sums respectively named, and was not to be considered as wholly or partially satisfied by the payment at any time of any sums due on such general balance; and any indulgence granted by the bank was not to prejudice the guarantee. S. having died, leaving T. and another executors, the bank on receiving notice of his death, without any communication with the executors beyond what would appear in T.'s pass book, closed T.'s account, which was overdrawn, and opened a new account with him, in which they did not debit him with the amount of the overdraft, but debited him with the interest on the same, and continued the account until he went into liquidation, when it also was overdrawn. The Court of Appeal held that there was no contract express or implied which obliged debtor and creditor to appropriate to the old overdraft the payments made by the debtor after the determination of the guarantee, and that the bank were entitled to prove against the estate of S. for the amount of the old overdraft less the amount of the dividend which they had received on it in the liquidation.(*a*)

In this case it will be seen, the rule in *Clayton's Case* not applying, and the Court holding that the guarantee did not amount to a contract to appropriate the moneys in reduction of the secured debt, the creditor was at liberty to elect to appropriate the moneys to the new account and not to the old one. On the other hand where a solicitor paid money which he had received for a client to his own banking account, and from that time up to the solicitor's

(*a*) *In re Sherry; London and County Banking Company* v. *Terry*, 25 Ch. D. 622.

death there was always a balance to the credit of the account exceeding the sum so paid in, but on many days during that period the credit balance was less than the amount of other clients' moneys which the solicitor had paid in subsequently to his payment of the money of the first client, and had not withdrawn, the Court held that the rule in *Clayton's Case* applied, and that the money of the first client must be taken to have been drawn out by the solicitor, and, therefore, not to have formed part of the balance to the credit of the account at the time of his death; and, consequently, that the first client was not entitled to be paid out of that balance specifically.(b)

Distinct Accounts.—From what has been stated it will be seen that where there are distinct accounts kept, and the customer is overdrawn and makes a general payment, without specifically appropriating it *at the time*, and there is no course of dealing, or other circumstances, showing clearly how he must have intended to appropriate the payment,(c) this is not a case within the rule we have been stating, but one in which the banker may apply the payment to which account he pleases;(d) and he is not bound to do it instantly, but may take a reasonable time.(e) On the other hand, if the customer is indebted to the banker on several accounts and pays in money, he, the customer, has a right to say *at the time* to which debt the payment shall be applied.(e)

A municipal corporation kept an account at a banking house. Afterwards, becoming invested with the functions of a local board of health, the corporation opened a second and separate account with the bankers. The bankers stopped payment, there being then due from the corpora-

(b) *In re Stenning, Wood* v. *Stenning* [1895], 2 Ch. 433, distinguishing *Hancock* v. *Smith*, 41 Ch. D. 456.

(c) See *Wilson* v. *Hirst*, 4 B. & Ad. 766; *Stoveld* v. *Eade*, 4 Bing. 154; *Lysaght* v. *Walker*, 5 Bligh (N.S.) 1; *Brown* v. *Anderson*, 2 Moore, P. C. 245.

(d) *Simson* v. *Ingham*, 2 B. & C. 72, 75. Entry in the customer's books is not evidence of the appropriation by him. *Manning* v. *Westerne*, 2 Vern. 606.

(e) *Ibid.*

tion, on account of its municipal affairs, a large sum of money, and a similar amount from the bank to the corporation, in respect of the local board of health account: it was held, that the corporation was entitled to set off these claims one against the other, for although the accounts were separate, the corporation was a debtor in the first account and a creditor in the second and in the same right.(a)

When a customer has opened with his bankers separate accounts specially headed with the names of the trust to which the moneys paid into those accounts belong, the bankers are not at liberty upon the bankruptcy of the customer to apply those moneys in payment of the balance due to them upon the customer's overdrawn private account.(b)

Thus, a county treasurer used to pay the county moneys into Bacon's Bank, but kept his private account at the National and Provincial Bank, and carried over the police rates to this account by cheques drawn on Bacon's Bank: in 1869 he opened a separate account with the National and Provincial Bank, headed "Police Account," and some of the items to his credit in this account could be traced as having come from county funds, but most of them could not: the cheques which he drew upon it were all headed "Police Account," and drawn only for county purposes: for the purposes of interest the National and Provincial Bank treated the accounts as one account, the interest on the balance in his favour being carried to the credit of his private account: at the time when the police account was opened, the manager of the bank knew that he was county treasurer and understood that he had been in the habit of paying county moneys into the bank: in April, 1870, he absconded, his private account being overdrawn, and the police account being in credit:—the Court held, that

(a) *Pedder* v. *Preston (Mayor, &c.)*, 9 Jur. (N.S.) 496; 11 C. B. (N.S.) 535; 31 L. J. C. P. 291.

(b) *Ex parte Kingston, In re Gross*, L. R. 6 Ch. 632; 40 L. J. Ch. 91.

the bank was not entitled to set off the one account against the other, but that the county magistrates were entitled to recover the balance standing to his credit on the police account.(c)

When a partnership has been dissolved and one or more of the partners continue the business, and a creditor of the firm continues the credit, and blends together his accounts with the old firm and the new, payments made by the new firm on account must be applied in the first instance to the satisfaction of the old firm.(d)

This rule holds good not only with respect to payments actually entered in the blended account but also with respect to any sum of money paid without specific appropriation after the blended account has been sent in.

The plaintiffs supplied goods to K. and D., who were in partnership, and they gave the plaintiffs their acceptance for 132*l.*, the amount. Before the bill was due K. and D. dissolved partnership, and gave notice to the plaintiffs with the intimation that K. would carry on the business, and would receive and pay the accounts due to and from the old firm. The plaintiffs continued to supply K. with goods, and he gave them his acceptance for the amount, and also paid them several sums on account, but without any specific appropriation. After some months the plaintiffs sent in their account to K., beginning on the debit side with the acceptance for 132*l.*, and, after giving him credit for the sums paid, showing a balance against K. of 92*l.* After this K. paid the plaintiffs two other sums, which, with the sums already paid, amounted to more than 132*l.* The plaintiffs having sued K. and D. on their acceptance for 132*l.*, D. pleaded payment :—Held, that, the plaintiffs having sent in the statement to K. treating the whole as one account, the subsequent payments must be appropriated to the earlier items of the account; and consequently that the plea was proved.(d)

(c) *Ex parte Kingston, In re Gross, ante.*
(d) *Hooper* v. *Keay*, 1 Q. B. D. 178; 34 L. T. 574; 24 W. R. 485.

The same principle applies when the partnership expires: thus, Brooke, a lieutenant-colonel in the army, employed one Gilpin, as army agent and banker, to receive his pay and allowances, and also dividends on his stock, and other moneys on his account, and from time to time to make payments to him, or his order, for which purpose he was in the habit of drawing on Gilpin, who, from time to time, sent in his account to the employer. Brooke continued to employ Gilpin in this way from some time before the year 1807 down to the year 1819, when Gilpin became bankrupt; no rest was made or balance struck in the account after the 1st of July, 1816, and during the whole period of the account there was always a considerable balance due to Brooke. On the 24th of September, 1807, Gilpin had entered into partnership, *for a period of ten years*, with one Enderby, but the business continued to be transacted in the name of Gilpin alone, and Brooke had no notice or knowledge of the partnership until after the bankruptcy of Gilpin; and the receipts and payments prior and subsequent to the 24th of September, 1817, when the partnership expired, formed part of one general account. Then, on Brooke bringing an action against Enderby and Gilpin, to recover the balance due to him at the expiration of the partnership, the Court held that Enderby (Gilpin having pleaded his bankruptcy) was entitled to consider any sums paid by Gilpin after the expiration of the partnership, as being paid in reduction of the balance then due to Brooke, and might take credit for them, without giving credit to Brooke for any sums received after the expiration of the partnership by Gilpin on account of Brooke.(*a*)

The acting member of a partnership has an implied authority to assent to the transfer of the partnership account from one bank to another, without an express assent of the other partners. Upon such transfer, however, the actual amount due is alone transferred. Where the balance due

(*a*) *Brooke* v. *Enderby*, 2 B. & B. 70.

from the firm at the time of the transfer has been overtopped by subsequent payments to their credit, as to which there has been nothing to take the case out of the ordinary principle of appropriation of payments to the earlier items, the banker has no right of action in respect of the balance existing at the time of transfer, which has thus become extinguished, but only in respect of the balance subsequently become due.(*b*)

Legal and Illegal Payments.—If there be a running account between the customer and the bankers, and the bankers make large advances to him, part of these advances arising out of illegal and part out of legal transactions, and the customer from time to time deposits bills and makes payments, without any specific appropriation or any settlement of the account, it will be held, that the payments must be applied to the reduction of the earlier items of the account, and to the legal, and not the illegal, part of the demand.(*c*) So bankers may apply subsequent unappropriated payments to debts barred by the Statute of Limitations.(*d*)

Specific Appropriation.—When money is paid in on a specific account by the customer, and accepted by the banker, the money cannot be appropriated to any other account or debt.(*e*) Therefore, where a customer paid a sum of money to a country banker, with instructions to remit 500*l*., part of the sum, to a London banker, to meet the acceptances of the customer, and the banker on the same day sent several bills to a bill broker, and directed the London banker to meet the acceptances, and on the next day the country banker stopped payment; it was held, that the sum of 500*l*. was specifically appropriated, and that the customer was entitled to recover it back in full.(*e*)

(*b*) *Beal* v. *Caddick*, 2 H. & N. 326; 26 L. J. Ex. 356.

(*c*) *Ex parte Randleson*, 2 Deac. & C. 534; *Wright* v. *Laing*, 3 B. & C. 165.

(*d*) *Williams* v. *Griffith*, 5 M. & W. 300; *Ashby* v. *James* 11 M. & W. 542.

(*e*) *Farley* v. *Turner*, 26 L. J. Ch. 710. See also *Hill* v. *Smith*,

But when a person pays money into a bank to be applied in a specific manner, and the banker stops payment before taking any step towards applying it to the purpose, the payer cannot recover the money paid, but has merely a right of proof as a general creditor on the banker's estate.(*a*)

A solicitor in the country received from a client a large sum of money, which was to be paid by him into the Court of Chancery on the client's account. The solicitor obtained a bill for the sum from a country banker, and remitted it to his bankers in London, without stating the reason for which the amount had been paid to him. At the same time he was indebted to his bankers in 450*l*., for which they held securities, and as to which they kept an account separately from his general account. The solicitor died, and a few days afterwards the bill became due and was paid, and the bankers carried the amount to his general account. The bankers, for some time after they had received notice from the client of the circumstances under which the amount of the bill had been paid to the solicitor, continued to keep the accounts separately, but ultimately deducted the 450*l*. from the proceeds of the bill, and paid the balance to his executrix. The Vice-Chancellor held, that as there was no agreement binding the bankers to keep separate accounts as to the 450*l*. and the amount of the bill, and as they had no notice till after the amount was received of the purpose for which it was intended to be applied, the client was not entitled to recover from them any part of the proceeds of the bill.(*b*)

There is no difference between the Courts of Law and the Courts of Equity on this question of appropriation: both adopt the same principle as the ground of their

12 M. & W. 618; *Barned's Banking Company, In re Ex parte Massey*, 39 L. J. Ch. 635; 22 L. T. 853; *Johnson* v. *Robarts*, L. R. 10 Ch. 585; 44 L. J. Ch. 678.

(*a*) *In re Barned's Banking Company, Massey's Case*, 39 L. J. Ch. 635.

(*b*) *Grigg* v. *Cocks*, 4 Sim. 438.

decisions.(c) The same rule applies, moreover, as against a surety; for even in that case, the earlier items of the account will be those to which the earlier payments are to be regarded as appropriated.(d) But in the case of a trustee paying trust money into his own account and thus mixing it with his own money, the rule in *Clayton's Case* does not apply, and the drawer must be taken to have drawn out his own money in preference to the trust money. But as between two *cestuis que trust* the rule applies.(e) The same principle being applicable to dealings between a company and its bankers, it follows that a former shareholder, who has transferred his shares, is exonerated from contributing to the company's debt to its bankers, if before the winding-up sufficient money has been paid to the bank to cancel what was due to the bank when such shareholder ceased to be a member.(f)

Trust moneys.

(c) *Bodenham* v. *Purchas*, 2 B. & A. 45. See *Simson* v. *Ingham*, 2 B. & C. 72; *Williams* v. *Griffith*, 5 M. & W. 300; *Laing* v. *Campbell*, 36 Beav. 3; *Hooper* v. *Keay*, 1 Q. B. D. 178; 34 L. T. 574; *Ex parte Smith, In re Hamilton*, 25 W. R. 760.

(d) *Williams* v. *Rawlinson*, 3 Bing. 71; see also *Kinnaird* v. *Webster*, 10 Ch. D. 139; 48 L. J. Ch. 348.

(e) *In re Hallett's Estate, Knatchbull* v. *Hallett*, 13 Ch. D. 696, overruling *Pennell* v. *Deffell*, 4 De J. M. & G. 372. See also *Ex parte Dale*, 11 Ch. D. 772.

(f) *Devonport and South Devon Steam Flour Mill Company, In re Bateman's Case*, 42 L. J. Ch. 577.

CHAPTER XXVII.

LIEN.

THE general lien of bankers is part of the law merchant, to be judicially noticed like other parts of that law.(a)

Unless there be an express contract, or circumstances showing an implied contract inconsistent with the principle of lien, bankers have a general lien on all securities deposited with them, *as bankers*, by their customers.(b)

Securities for Special Purposes.—A banker's lien does not attach on securities placed in his hands for a special purpose, *e.g.*, where Exchequer Bills are deposited, in order that he may receive the interest on them and get them exchanged for fresh bills; for such special purpose is inconsistent with the notion of a general lien. It is on this ground, that if a customer goes to his banker requesting him to get a bank post bill for the purpose of transmitting into the country the sum of 1,000*l.*, which sum he hands over to him in bank notes, the banker, unless he expressly states that he receives the notes only subject to his lien, has no right to retain or apply them to any other purpose than that for which he received them.(c)

Where a customer deposited with his bankers a deed of conveyance, comprising two distinct properties, giving to them at the same time a memorandum pledging one of the

(a) *Brandao* v. *Barnett*, 12 C. & F. 787; *Bock* v. *Gorrissen*, 30 L. J. Ch. 39; 2 De G., F. & J. 434; *Jones* v. *Peppercorne*, Johns. 430; 28 L. J. Ch. 153.

(b) *Brandao* v. *Barnett*, *supra*; *London Chartered Bank of Australia* v. *White*, 4 App. Cas. 413; *Misa* v. *Currie*, 1 App. Cas. 554; 45 L. J. Ex. 414; *Leese* v. *Martin*, L. R. 17 Eq. 236; 43 L. J. Ch. 193; *Kinnaird* v. *Webster*, 10 Ch. D. 139; 48 L. J. Ch. 348; *Ex parte Manchester and County Bank*, 3 Ch. D. 481; 45 L. J. Bank. 149; *In re Williams*, 3 Ir. Rep. Eq. 346.

(c) *Brandao* v. *Barnett*, *supra*. For "liens" (so-called) arising by special agreement or equitable mortgages by deposit, see further, *ante*, p. 147.

properties as a security for a specific sum advanced, and also for his general balance, it was decided that, as the deposit of the deed of conveyance was for the special purpose of giving a security upon one property only, the bankers could not claim a general lien, by virtue of the custom of bankers, on the other property.(*d*)

And so where a customer deposited a policy of life assurance with his bankers, accompanied by a memorandum of charge to secure overdrafts, not exceeding a specified amount, in an action to administer the customer's estate, it was held, that the bankers' general lien was displaced and the charge was limited to the amount specified.(*e*)

But it would seem that even where a deposit had been made by way of specific security, a bankers' lien will attach thereto for any balance due after such security has been satisfied, unless such deposit was made for a purpose or under circumstances inconsistent with such a lien.(*f*)

Different Accounts.—A customer kept three accounts with his banker, called the general account, the loan account, and the discount account. The loan account was from time to time fed by the deposit of securities, which were ordinarily expressly deposited to secure the general balance. The customer wrote a letter to the banker, advising him that he had charged his account with 10,500*l.*, and stating that as by this time his credit with the banker would no longer afford a margin to that extent, he hastened

(*d*) *Wylde* v. *Radford*, 33 L. J. Ch. 51; approved in *In re Bowes*, 33 Ch. D. 588.

(*e*) *In re Bowes*, 33 Ch. D. 586. But it may be that bankers who have a power of selling securities deposited, when they have sold, and have clear money in their hands after satisfying the charge, may be entitled to say they will set off that money against further sums due to them, per NORTH, J., but it would seem that they could not do this as against the creditors of the mortgagor. *Talbot* v. *Frere*, 9 Ch. D. 568; *In re Gregson*, 36 Ch. D. 223.

(*f*) See *Brandao* v. *Barnett*, 12 C. & F. 787; *Jones* v. *Peppercorne*, John. 438; *Ex parte National Bank*, L. R. 14 Eq. 507; *In re European Bank*, L. R. 8 Ch. 41; 41 L. J. Ch. 401; *London Bank of Australia* v. *White*, 4 App. Cas. 413; *Ex parte Tweedy*, 5 Ch. D. 559. But see *Ex parte Kingston*, L. R. 6 Ch. 632; *Wolstenholme* v. *Sheffield Union Bank*, 54 L. T. 746; and *Talbot* v. *Frere*, *supra*.

to hand him by way of collateral security certain bills of exchange, which he specified; the Court held, that this did not exclude the banker's right to a general lien on the bills in respect of the balance due on the general account; for, as between banker and customer, whatever number of accounts are kept in the books, the whole is really but one account, and it is not open to the customer, in the absence of some special contract, to say that securities which he deposits are only applicable to one account.(a)

Branch Bank.—So, even if there are several accounts kept at several branches, such accounts can be treated as one, and if on the general balance the customer is shown to be indebted thereon, the banker's lien will apply.(b)

Plate.—Bankers have no lien for the balance of their account against a customer, on his plate deposited in his chest with them for safe custody,(c) or in boxes containing securities.(d)

Bills of Exchange, &c.—In the absence of any specific appropriation, a banker's lien extends to all bills paid in generally by the customer for the purpose of being realized and the proceeds carried to his account. If a customer lodges undue bills of exchange in the hands of his banker and draws upon them for any money he wants in advance, and the banker, charging no interest on these advances, but selecting out of the bills such as are nearest in amount to the sums advanced, discounts them, and debits the customer with the amount of such discount, but without any special agreement to that effect, there is nothing, in these circumstances, to invalidate the banker's right of lien for his balance, on all other bills

(a) *In re European Bank*, L. R. 8 Ch. 41; 27 L. T. (N.S.) 732.
(b) *Garnett* v. *McKewan*, L. R. 8 Ex. 10. See also *Prince* v. *Oriental Banking Company*, 3 App. Cas. 325.
(c) See *Ex parte Eyre*, 1 Ph. 235; 12 C. & F. 694, 797; per Lord CAMPBELL, *Brandao* v. *Barnett*, 12 C. & F. 809; and *O'Connor* v. *Majoribanks*, 4 M. & G. 435; *Leese* v. *Martin*, L. R. 17 Eq. 224.
(d) *Leese* v. *Martin*, *supra*.

placed in his hands by the customer besides those that he discounts.(*e*) It seems to be universally true, that a customer cannot get back paper securities in his banker's hands, without paying the balance against him, unless there is some special contract between the banker and the customer inconsistent with the general lien.(*f*)

S. discounted with a bank bills of exchange drawn against goods consigned to India, handing over the bills of lading as security. The bank carried a part of the discount value of the bills to a suspense account till advice of the payment of the bills, to form a margin or an additional security against a fall in the price of the goods, and gave accountable receipts for such margins. S. deposited these receipts with A., who gave notice to the bank. The bills having been dishonoured, the bank was held entitled to a lien on the marginal receipts for such sums as were actually due and payable to the bank by S. at the times when the marginal receipts respectively became payable, in respect of liabilities contracted before notice of the deposit was received, but not to a lien for sums not actually due.(*g*)

A banker, who has discounted bills for a customer, has no implied lien on that customer's cash balance during the currency of the bills.(*h*)

The rule is so strong as regards the lien on securities, which come into the banker's hands *without being appropriated to any special purpose*, or entrusted to them for safe custody or the like, that it attaches on bills and notes *payable to bearer*, or other negotiable instruments which pass by delivery, although the customer depositing them was not the real owner, and had no authority to saddle the property in them with a lien, provided the bankers, at the

(*e*) *Davis* v. *Bowsher*, 5 T. R. 488. See as to lien on undue bills, as between the customer of a country bank and the latter's London correspondent and otherwise, *ante*, p. 145 (n).

(*f*) *Per* Lord Campbell, in *Brandao* v. *Barnett*, 12 C. & F. 787; and Wood, V.C., in *Jones* v. *Peppercorne*, 5 Jur. (N.S.) 140; 28 L. J. Ch. 158.

(*g*) *Jeffryes* v. *The Agra and Masterman's Bank*, 35 L. J. Ch. 686.
(*h*) *Bowes* v. *Foreign and Colonial Gas Company*, 22 W. R. 740.

time of the deposit, have no notice of any equitable trust or title attaching to these securities (*a*)

Securities left by Mistake.—A banker has no right to any lien on securities left by mistake or casually at the bank, upon the occasion of an application to him to advance money on them, which he had refused to do.(*b*)

Partnerships.—Bankers have no lien on the deposit of a partner, on his separate account, for a balance due to the bank from the firm.(*c*) A firm had an account with a bank and one of the firm had a separate account with the same bank. Upon the bank discounting a promissory note of such partner, he deposited with the bank certain shares as a security for the same, or for any sums of money in which he might then be or might thereafter become indebted to them. The shares afterwards became the property of the firm, which became bankrupt largely indebted to the bank; the bank was held not entitled to hold the shares as a security for the joint debt, but for the separate debt only of the partner depositing the shares.(*d*) At the commencement of the bankruptcy of the firm of A. and W. there were standing registered in the name of A. shares in a bank, whose articles of association provided that all the shares of every shareholder should be subject to a lien in favour of the bank for any debt due to the bank from him alone, or jointly with any other person. The shares in question, which were originally the private property of A., became partnership assets when he entered into partnership with W., but the bank had no notice that anyone but A. was interested in the shares. The bank sought to prove against the joint estate of the firm for a large debt con-

(*a*) *Barnett* v. *Brandao*, 6 M. & G. 630. See also *Misa* v. *Currie*, 1 App. Cas. 554; 45 L. J., Ex. 414; *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194; 46 L. J., Q. B. 346; *Symons* v. *Muthern*, 46 L. T. 763.

(*b*) *Lucas* v. *Dorrien*, 7 Taunt. 279.

(*c*) *Watts* v. *Christie*, 11 Beav. 546. See also *Wolstenholme* v. *Sheffield Union Bank*, 54 L. T. 746.

(*d*) *Ex parte M'Kenna*, 30 L. J., Bank. 20.

tracted after the shares became partnership assets:—Held, that the lien of the bank on the shares was a security on the joint estate, and that the bank could only prove for the amount of their debt after deducting the value of their shares.(*e*)

Realising Lien.—Little has been decided to illustrate how far the law permits a banker to realise, and make productive, his lien on securities.

In case of any negotiable security which comes to his hands on account of a customer, to whom the banker is in advance, he has, as has been said, a lien or power of detention; and in order to make such power productive, he may put the negotiable instrument in suit,(*f*) and recover upon it so much as will cover the balance due to him from the customer.(*g*) With respect to other securities, it is submitted that, in the case of a mere lien (as distinguished from an equitable mortgage), a banker has no right of sale.(*h*)

But, instead of advancing their remedy, bankers will destroy their right of lien, if after a lien has been established they take a security, *which is payable at a distant day*, for the debt.(*i*)

(*e*) *Ex parte Manchester and County Bank*, 3 Ch. D. 481.

(*f*) *Bolland* v. *Bygrave*, Ry. & M. 271; *Bosanquet* v. *Dudman*, 1 Stark. 1.

(*g*) *Scott* v. *Franklin*, 15 East, 428. The lien is only, at most, co-extensive with the balance due; per EYRE, C.J., *Bolton* v. *Puller*, 1 B. & P. 546.

(*h*) See *Donald* v. *Suckling*, L. R. 1 Q. B. 585, at p. 605; *Legg* v. *Evans*, 6 M. & W. 36.

(*i*) *Cowell* v. *Simpson*, 16 Ves. 278; *Hewison* v. *Guthrie*, 3 Scott, 311; 2 Bing. N. C. 755. "As I understand the law," said KAY, L.J., in *Angus* v. *McLachlan*, 23 Ch. D. at p. 335, "it is not the mere taking of a security which destroys the lien, but there must be something in the facts of the case, or in the nature of the security taken, which is inconsistent with the existence of the lien and which is destructive of it."

CHAPTER XXVIII.

PARTNERSHIPS.

THE law relating to common law partnerships will be found codified in the Partnership Act of 1890. The following are the most important sections of the Act dealing with the liability of partners as regards third parties:—

Every partner is an agent of the firm, and his other partners, for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has, in fact, no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.(a)

(a) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5.

An acting partner has implied authority to assent to the transfer of their account from one banker to another, without the express assent of the rest of the firm, but it is doubtful whether the acting partner has such authority to borrow a sum from the transferee of the account, in order to pay off the bank from which the transfer was made, or those who constituted it. *Beal* v. *Caddick*, 26 L. J. Exch. 356. But one partner has no authority, in the absence of evidence of custom, to bind his co-partner by opening a banking account in his own separate name, instead of the name of the partnership, although the account may be for partnership purposes, and consequently the bankers will not be entitled to recover against both partners the overdrawn account. *Alliance Bank* v. *Kearsley*, 40 L. J. C. P. 249; L. R. 6 C. P. 433; 24 L. T. 552. A partner may also bind the firm by receiving payment of debts due to it, and by giving receipts and releases in respect of them.

So, again, supposing the partnership is a trading partnership, a partner can bind his co-partners by accepting, drawing, or indorsing bills of exchange in the name of the firm, though he be expressly forbidden by the firm to enter into such contracts. *Kirk* v. *Blurton*, 9 M. & W. 284; *Forbes* v. *Marshall*, 11 Ex. 166; and see *ante*, p. 31. Where the name of the firm is also the name of one of the members of the firm, a bill of exchange drawn, accepted, or indorsed in that name will *primâ facie* be taken to be a partnership bill, at least where the individual partner carries on no separate business; but this presumption may be rebutted. *Yorkshire*

An act or instrument relating to the business of the firm, and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments (section 6).

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound(*b*) unless he is, in fact, specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.(*c*)

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contraven-

Banking Company v. *Beatson*, 5 C. P. D. 109. But where the firm is not a trading one, as in the case of a firm of solicitors, there is no implied authority for one of the partners to bind the others by drawing, accepting, or indorsing such instruments. *Garland* v. *Jacomb*, L. R. 8 Ex. 216. Nor has one partner implied authority to accept, in the name of the firm, bills drawn in blank. *Hogarth* v. *Latham*, 47 L. J. Ex. 399.

As regards cheques, it seems that one partner has implied authority to bind the firm by cheques drawn in the firm's name (*Down* v. *Halling*, 4 B. & C. 330; *Laws* v. *Rand*, 4 Jur. (N.S.) 74); and one partner in an ordinary commercial business can, too, bind his co-partners by borrowing money for the purposes of the business (*Lane* v. *Williams*, 2 Vern. 277; *Brownrigg* v. *Rae*, 5 Ex. 489); and for this object may pledge the personal property of the firm. *Ex parte Bonbonus*, 8 Ves. 540.

But a partner has no implied authority to bind his co-partners by a submission to arbitration (*Adams* v. *Bankart*, 1 Cr. M. & R. 681; *Thomas* v. *Atherton*, 10 Ch. D. 185; 48 L. J. Ch. 370), nor by executing a deed, such as a legal conveyance, whether by way of mortgage or otherwise (*Berry* v. *Jackson*, 4 T. & R. 516), nor by giving a guarantee. *Duncan* v. *Lowndes*, 3 Camp. 478.

On the other hand, it would seem he may bind the firm by giving a mortgage of the real estate belonging to the firm by way of equitable deposit (see "Pollock on Partnerships," p. 29); and it has been held a surviving partner can give a valid charge on property of the partnership by way of security for a debt incurred by the partners during the life of the deceased partner. *In re Clough*, 31 Ch. D. 324.

A partner has no implied authority to accept shares in a company by way of satisfaction of a debt due to the firm, even though such shares are fully paid up. *Niemann* v. *Niemann*, 43 Ch. Div. 198; 59 L. J. Ch. 220.

(*b*) Section 6.

(*c*) Section 7. See *Kendal* v. *Wood*, L. R. 6 Ex. 248.

tion of the agreement is binding on the firm with respect to persons having notice of the agreement.(a)

Joint and several Liability.—Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration(d) for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts.(b)

Wrongful Acts.—Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable

(a) Section 8. See *Cox* v. *Hickman*, 8 H. L. C. 268.

(b) Section 9. It was at one time thought that in equity partnership debts were both joint and several; but in *Kendall* v. *Hamilton*, 4 App. Cas. 504, it was decided that there was no foundation for this general statement, and that they are joint only. Consequently, it was then held that an action, and a judgment against two persons who had borrowed money from the plaintiffs (though the judgment was unsatisfied), constituted a bar to another action brought by the same plaintiffs against a third person, who was afterwards discovered to have been really interested as a partner in the business for the purposes of which the money had been borrowed. But the creditor of a partnership firm, although not strictly a joint and several creditor, has concurrent remedies against the estate of a deceased partner and the surviving partner; and it makes no difference which remedy he pursues first. But it is necessary that the surviving partner should be present at taking the accounts of the estate of the deceased partner, and that the partnership creditor should not come into competition with the separate creditors of the deceased partner. *Beckett* v. *Ramsdale*, 31 Ch. D. 177; *Kendall* v. *Hamilton*, *supra*.

Although a creditor who has recovered judgment against one partner cannot sue another partner, it has been held that that rule does not take away the rights of a surety for one partner as against another partner (*Badely* v. *Consolidated Bank*, 34 Ch. D. 537; 38 Ch. D. 238; but this point was not dealt with in the Appeal Court). Nor does the rule in *Kendall* v. *Hamilton* apply where the liability of the partners are under the special circumstances of the case several as well as joint; as where partners have joined in a breach of trust. *Ex parte Chandler*, 13 Q. B. D. 50; *Blyth* v. *Fladgate* [1891], 1 Ch. 337; 60 L. J. Ch. 66. Nor does it apply to cases where there are two distinct causes of action; so, an unsatisfied judgment against one joint contractor, on a cheque given by him alone for the joint debt, is not a bar to an action against the other joint contractor on the original contract. *Wegg-Prosser* v. *Evans* [1895], 1 Q. B. 108; 64 L. J. Q. B. 1.

therefor to the same extent as the partner so acting or omitting to act(c)—

In the following cases; namely:—

(a.) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(b.) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.(d)

Every partner is liable jointly with his co-partners, and also severally, for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.(e)

(c) Section 10.
(d) Section 11.
(e) Section 12. See *Rhodes* v. *Moules* [1895], 1 Ch. 236.

The following cases will illustrate the liability of a bank in respect of the tortious acts of one of its members. The subject will be found more fully dealt with in the Chapter on "Deposits for Safe Custody."

A lady having an account with a banking house, consisting of several partners, was advised by one of them to dispose of certain Dutch bonds of which she was possessed, and to place the proceeds on better security; the partner also suggesting that the money should be lent to his son. In this plan the lady acquiesced, in consequence of the great confidence she had in the firm, and gave the partner a cheque upon the bank for the money, payable to a third person named, or bearer, and received a promissory note for repayment with a guarantee from the partner, who afterwards absconded. The security subsequently proved worthless.

On the lady filing a bill in equity against the remaining partners, it was held that they were *not* liable for the loss, because the transaction was not within the scope of a banker's business, and was not recommended or sanctioned by the other partners. *Bishop* v. *Countess of Jersey*, 2 Drew. 143; 23 L. J. Ch. 483.

The owner of certain exchequer bills deposited them with a firm of bankers, and subsequently one of the partners sold them without the knowledge of their owner or of the other partners. The proceeds were innocently applied by the bank to its own use:—Held, that the bank was liable. *Clayton's Case*, 1 Mer. 572.

One of the partners in a bank caused stock, belonging to a customer of the bank, to be sold out, by means of a power of attorney, which he forged. The proceeds of the stock were paid to the account of the banking firm, at the house of the bank's agents, and were appropriated by the partner, who was afterwards found guilty of other forgeries and hanged. His partners were, in fact, ignorant of the fraud, but might have known it by the exertion of common diligence. The customer was held entitled to maintain an action against the partners for the amount. *Marsh* v. *Keating*, 1 Bing. N. C.

Improper Use of Trust Moneys.—If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein: Provided as follows:—

(1.) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(2.) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.(*a*)

Holding Out.—Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof, shall not of itself make his executors

198; approved in *Reid* v. *Rigby* [1894], 2 Q. B. 40. In this case the judgment went more or less on the ground that the partners might have known of the fraud, but, had it been otherwise, they would still have been liable, inasmuch as the selling, through their broker, of stock belonging to their customers and receiving and remitting the proceeds was within the scope of the firm's business. See also *Blair* v. *Bromley*, 2 Ph. 354; *Ex parte Eyre*, 1 Ph. 227; *St. Aubyn* v. *Smart*, L. R. 3 Ch. 646; *Plumer* v. *Gregory*, L. R. 18 Eq. 621; *Thomas* v. *Atherton*, 10 Ch. D. 185; 48 L. J. Ch. 370; *Read* v. *Bailey*, 3 App. Cas. 94; 47 L. J. Ch. 161; *Lacey* v. *Hill*, 4 Ch. D. 537; *Plumer* v. *Gregory*, 31 L. T. 7; *Cleather* v. *Twisden*, 28 Ch. D. 340; *Cooper* v. *Prichard*, 11 Q. B. D. 351; *Blyth* v. *Fladgate* [1891], 1 Ch. 337; 52 L. J. Q. B. 526; *Rhodes* v. *Moules* [1895], 1 Ch. 236.

So, it has been laid down, that if one partner in a banking house colludes with a member of a trading firm in a transaction connected with the business of the bank, the banking firm is liable to the trading firm for any damages which the latter may have suffered by reason of such a transaction. *Longman* v. *Pole*, M. & M. 225.

(*a*) Section 13.

or administrators, estate, or effects liable for any partnership debts contracted after his death.(*b*)

An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.(*c*)

Notice.—Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.(*d*)

Incoming and Outgoing Partners.—A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.(*e*)

(*b*) Section 14. It would seem that the principle of "holding out" cannot have any application to causes of action arising *ex delicto*. See Lindley, 75.

(*c*) Section 15.

(*d*) Section 16.

(*e*) Section 17. Whether an incoming partner has become liable in respect of debts contracted prior to his becoming a partner will depend upon whether he has expressly or impliedly agreed to be liable, and the creditors have agreed to accept the new firm as their debtors, and to discharge the old one, or in other words whether there has been a *novation*. A mere agreement between the new partner and the old ones that he will be liable for debts then existing will not enable the *creditors* to sue him. See *Rolfe* v. *Flower*, L. R. 1 P. C. 27; Lindley, 216; Pollock, 60.

As to liability of retiring partner, see *Daniel* v. *Cross*, 3 Ves. 277; *Clayton's Case*. 1 Mer. 579; *Swire* v. *Redman*, 1 Q. B. D. 536; *Bilborough* v. *Holmes*, 5 Ch. D. 255; *Rouse* v. *Bradford Banking Company*, [1894], 2 Ch. 32; A. C. 586; 63 L. J. Ch. 890; *Re Head* [1893], 3 Ch. 426; 63 L. J. Ch. 35; *Re Head* [1894], 2 Ch. 236; 63 L. J. Ch. 549. And see *ante*, p. 124.

Guarantee.—A continuing guarantee or cautionary obligation given either to a firm or to a third person in respect of the transaction of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee or obligation was given.(*a*)

Rights against Apparent Members.—Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Notice of change in firm.

An advertisement in the *London Gazette* as to a firm whose principal place of business is in England or Wales; in the *Edinburgh Gazette* as to a firm whose principal place of business is in Scotland; and in the *Dublin Gazette* as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution, or change so advertised.

The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.(*b*)

On the dissolution of a partnership, or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.(*c*)

After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to wind up the

(*a*) Section 18. Re-enacting provisions in the Mercantile Law Amendment Act, 1856. See *ante*, p. 203.

(*b*) See section 36.

(*c*) Section 37.

affairs of the partnership, and to complete transactions begun but unfinished, at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt, but this proviso does not affect the liability of any person who has after the bankruptcy represented himself, or knowingly suffered himself to be represented, as a partner of the bankrupt.(*d*)

Partnerships in other Firms.—The rule as to partnerships in other firms is thus stated by LINDLEY, L.J., in his work on "Partnership," p. 192: "If there are two firms with one name, a person who is member of both firms is liable to be sued on all bills bearing that name, and binding on either firm. But if a member of only one of the two firms is sued on the bills his liability will depend first on the authority of the person giving the bill to use the name of the firm of which the defendant is a member; and, secondly, on whether the name of that firm has in fact been used. If both these questions are answered in the affirmative he will be liable, but not otherwise."

Thus, A., B., and C. traded under the firm of *A.* and *B.* in the cotton business, and A. and B. traded as partners alone under the same name in the business of grocers, in which latter business they became indebted to D., and gave him their acceptance, which they were unable to take up when due. In order to provide for it, they indorsed to D. in the common firm of A. and B. a bill of exchange, which they had received in the cotton business in which C. was interested, but such indorsement was unknown to C.:—Held, that such indorsement in the firm common to both partnerships of a bill received by A. and B. in the cotton business bound C.(*e*)

(*d*) Section 38.
(*e*) *Swan* v. *Steele*, 7 East, 210.

CHAPTER XXIX.

SAVINGS' BANKS.

A SAVINGS' BANK is defined to be an institution, in the nature of a bank, formed or established for the purpose of receiving deposits of money for the benefit of the persons depositing to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators at compound interest, and to return the whole or any part of such deposit, and the produce thereof, to the depositors, their executors or administrators —deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution—but deriving no benefit whatever from any such deposit or the produce thereof.(*a*) A savings' bank company is not necessarily a banking company.(*b*)

In 1863, the previous Acts relating to savings' banks in England and Ireland were repealed, and new provisions were made for their management and establishment, which were consolidated by that Act.(*c*)

Since the 28th of July, 1863, savings' banks cannot be formed under the provisions of the new statute, unless they have received the previous sanction and approval of the Commissioners for the Reduction of the National Debt, or the Comptroller-General or Assistant-Comptroller acting

(*a*) 9 Geo. 4, c. 92, s. 2; 26 & 27 Vict. c. 87, s. 2. Although this Act is now wholly repealed, yet as the character of a savings' bank has not been altered by subsequent legislation the definition in the repealed Act is retained in the text.

(*b*) *Coe*, *Ex parte*, 10 W. R. 138; 31 L. J. Bank. 8.

(*c*) 26 & 27 Vict. c. 87. This Act repeals the 9 Geo. 4, c. 92; 3 Will. 4, c. 14, ss. 21, 22, 25, 28, 29—35; 5 & 6 Will. 4, c. 57; 7 & 8 Vict. c. 83; 11 & 12 Vict. c. 133; 17 & 18 Vict. c. 50, s. 2; 22 & 23 Vict. c. 53; and 23 & 24 Vict. c. 137. See also 40 Vict. cc. 13, 14; 37 & 38 Vict. c. 73. The 59 Geo. 3, c. 62, as to Scotland, remains in force until the Scotch Savings' Banks adopt the Act of 1863. By 26 Vict. c. 25, and 32 & 33 Vict. c. 59, the National Debt Commissioners may invest the savings of banks under 9 Geo. 4, c. 92.

under the Commissioners.(*d*) The rules and regulations for the management of savings' banks must be entered in books kept for the purpose, and open for the inspection of depositors, or the managers and trustees will not be entitled to avail themselves of the privileges or powers conferred by the enactment.(*e*)

Banks established under the provisions either of the repealed statutes, or of the Act of 1863, are to be certified by the title of "Savings' Bank certified under the Act of 1863," with such additional local description, if any, as may be required, for the sake of distinctiveness, and the members of any other bank, association or company, or any other person, using or adopting such title as their designation for carrying on business, will be guilty of a misdemeanor, and on conviction will be punishable accordingly.(*f*)

Deposits.—No person can become a depositor for the first time, without disclosing his name, profession, business, occupation, calling and residence.(*g*)

By section 38 of the Act of 1863 every person at the time of his first deposit must, and afterwards as often as required by the trustees or managers, make and sign a declaration of not being entitled to any deposit in or benefit from any other savings' bank: a printed notice of this regulation being affixed in the bank; and a copy of the declaration, with notice of the penalty,(*h*) annexed to or printed at the beginning of the deposit book.(*h*) Any person having a deposit in more than one savings' bank in the United Kingdom, or having deposits standing to the credit of more than one account in the same savings' bank in the United Kingdom, is liable to forfeit the amount

(*d*) 26 & 27 Vict. c. 87, s. 2.
(*e*) *Ibid.*, s. 3.
(*f*) *Ibid.*, s. 5; 54 & 55 Vict. c. 21, s. 1 (1).
(*g*) *Ibid.*, s. 36.
(*h*) 26 & 27 Vict. c. 87, s. 38. The penalty imposed by this section having been repealed by 54 & 55 Vict. c. 21 and a fresh penalty for *duplicate deposits* imposed; *quære* whether notice has now to be given and if so in what form.

illegally deposited, or so much of it as in the case of post office savings' banks the Postmaster General, or in trustee savings' banks, the National Debt Commissioners may think fit.(*a*)

No one can deposit more than 50*l* in any one year,(*b*) whether any sum has or has not been previously withdrawn,(*c*) but this provision does not prevent depositors from transferring their account from one bank to another.(*d*) Under the Act of 1863 the amount allowed to be deposited in any one year was 30*l*. *exclusive of compound interest*, but it would appear from the wording of the Act of 1893 that interest is now to be included when calculating the total sum deposited.

Moreover, deposits cannot be received from any depositor, so as to make the sum standing to the credit of the account exceed 200*l*.(*e*)

But interest will be credited to the depositor on the 200*l*., but not on the excess caused by such accumulation of interest.(*f*) This is the law since 1891; prior to that date no interest was allowed so long as the sum deposited remained at 200*l*.

By the Savings' Bank Act of 1887,(*g*) if the account of a person appearing to be deceased does not exceed 100*l*., subject to the regulations provided by the Act, probate or other proof of the title of the personal representative of the deceased person may be dispensed with and the sum may be distributed among the persons appearing in manner provided by such regulations to be beneficially entitled to the personal estate of such deceased person. The section also provides for the nomination by a depositor not under sixteen of any person to whom any sum not exceeding

(*a*) 54 & 55 Vict. c. 21, s. 12. See last note as to notice of penalty.

(*b*) With reference to trustee savings' banks the year ends on the 20th November, and with reference to post office savings' banks on the 31st December. 54 & 55 Vict. c. 21, s. 11.

(*c*) 56 & 57 Vict. c. 69, s. 1.

(*d*) 26 & 27 Vict. c. 87, s. 40.

(*e*) 54 & 55 Vict. c. 21, s. 11 (1).

(*f*) *Ibid.*, s. 11 (3).

(*g*) 50 & 51 Vict. c. 40, s. 3 (2).

100*l*. payable to such depositor at his decease is to be paid and for payment accordingly. A depositor having closed his account may reopen it at the same or another bank, but must not pay in an amount which, with the sum paid in to the old account, will exceed the maximum limit.(*h*)

Money on deposit in a post office savings' bank will pass under a gift in a will of "money invested in consols or other securities."(*i*)

By the Married Women's Property Act, 1882,(*k*) it is enacted that (*inter alia*) "all deposits in any post office or other savings' bank, and all annuities granted by the Commissioners for the Reduction of the National Debt, or by any other person which are at the commencement of the Act standing in the sole name of a married woman shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman, and the fact that such deposit, &c., is standing in the sole name of a married woman shall be sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same without the concurrence of her husband, and to indemnify the Postmaster General or the Commissioners for the Reduction of the National Debt in respect thereof." By section 8 the provision is extended to joint accounts in the names of a married woman and another person other than her husband.

Deposits may be received from the trustees or treasurers of any friendly society legally enrolled or certified in the manner required by the Acts in force relating to friendly societies, without restriction as to amount,(*l*) and from the trustees or treasurers of any charitable or provident institution or society, or charitable donation or bequest, for the maintenance, education or benefit of the poor, or of any penny savings' bank within the United Kingdom, to

(*h*) 26 & 27 Vict. c. 87, s. 39.
(*i*) *In re Saxby; Saxby* v. *Kiddell*, W. N. (1890), 171.
(*k*) 45 & 46 Vict. c. 75, s. 6.
(*l*) 26 & 27 Vict. c. 87, s. 33.

the amount of 100*l.* *per annum*, and of 300*l.* in the whole, exclusive of interest; (*a*) and funds of benefit building societies are now allowed to be invested in savings' banks.(*b*)

Annuities.—Depositors, or persons about to become depositors, may purchase annuities of any amount not exceeding 100*l.* a year.(*c*)

For the purpose of immediate purchase of an annuity a deposit not exceeding the amount to be paid for such annuity may be deposited in any one savings' bank year in addition to the maximum amount which is otherwise allowed to be deposited in a savings' bank in that year,(*d*) but such excess shall bear no interest.

Deposit Book.—Provision must be made in the rules of all savings' banks for every depositor, once a year at least, causing his deposit book to be produced at the bank for the purpose of being examined.(*e*)

Remedies of Depositors.—By the same Act it was enacted that any dispute arising between the trustees and managers and an individual depositor, or his executor, administrator, next of kin, or creditor or assignee, or a person claiming to be entitled to any deposit, was to be referred in writing to the barrister appointed under the Savings' Bank Acts, who had power to proceed *ex parte* on a notice in writing to the trustees or managers being left or sent through the Post Office to the office of the bank; and whatever award, order, or determination he might have made would have been binding and conclusive on all parties, and final to all intents and purposes, without any appeal.(*f*) The submission and award are exempt from stamp duty.(*g*) Now, however, the dispute

(*a*) 26 & 27 Vict. c. 87, s. 32.
(*b*) 57 & 58 Vict. c. 47, s. 16.
(*c*) 45 & 46 Vict. c. 51, s. 2.
(*d*) *Ibid.*, s. 7.
(*e*) 26 & 27 Vict. c. 87, s. 6.
(*f*) *Ibid.* s. 48. He may inspect books and administer oaths: *Ibid.* s. 49; see *Lynch* v. *Fitzgerald*, 15 L. T. 372.
(*g*) 26 & 27 Vict. c. 87, s. 50.

must be referred to the registrar under the Friendly Societies Act, 1875, s. 22.(*h*)

An action is not maintainable by depositors against the trustees or managers to recover their deposits; they must have recourse to the mode of reference pointed out by the statute.(*i*)

Investments.—The trustees must pay into the Bank of England or the Bank of Ireland, as the case may require, all sums to be invested in the names of the Commissioners for the Reduction of the National Debt, that is to say, all the deposits they receive, except such sums as from time to time may necessarily remain in the hands of the treasurers to answer the exigencies of the savings' bank; and they are not to invest in any other manner or upon any other security;(*k*) and all moneys so paid into the Bank of England or Ireland must be invested by the commissioners from time to time in the purchase of Bank Annuities or Exchequer Bills, or parliamentary securities, of whatsoever kind, created or issued under the authority of any Act or Acts of Parliament for the interest on which provision is made by Parliament, or any stock or debenture or other securities expressly guaranteed by authority of Parliament, and the interest, as it becomes due thereon, is in like manner to be invested in these Government Annuities, Exchequer Bills, or securities.(*l*) But this provision does not prevent a depositor withdrawing his account for investment in other securities, and by the Savings' Bank Act of 1880, as varied by the Act of 1893,(*m*) a depositor may invest in Government Stock,(*n*) subject to the regulations in the said Acts contained, to the extent of 200*l*. stock in any one year, but the whole amount of stock at any one

(*h*) 38 & 39 Vict. c. 60, s. 22, and see 39 & 40 Vict. c. 52, s. 2, sub-sect. 1.

(*i*) See, under the former Acts, *Crisp* v. *Bunbury*, 8 Bing. 394; *R.* v. *Witham Savings' Bank*, 1 A. & E. 321; *R.* v. *Mildenhall Savings' Bank*, 6 A. & E. 952; *R.* v. *Northwich Savings' Bank*, 9 A. & E. 729, and see statutes cited in previous note.

(*k*) 26 & 27 Vict. c. 87, s. 15.

(*l*) *Ibid.* s. 19.

(*m*) 43 & 44 Vict. c. 36, s. 3; 56 & 57 Vict. c. 69, s. 2.

(*n*) For definition of "Government Stock," see 56 & 57 Vict. c. 69, First Schedule.

time standing to the credit of the account must not exceed 500*l*. Dividends are to be dealt with as money deposited, but are not, during the year in which they are credited, to be reckoned in computing the maximum amount which may be deposited in that year.(*a*)

Weekly and Annual Accounts.—The trustees and managers of trustee savings' banks are to transmit weekly returns to the Commissioners for the Reduction of the National Debt, showing the amounts of the week's transactions and the amount of the cash balances in the hands of the treasurer or other person on account of the bank.(*b*) The trustees and managers are annually to prepare a general statement of the funds of the savings' bank invested in the Bank of England or the Bank of Ireland, showing the balance or principal sum due to all the depositors collectively, the expenses incurred, and stating in whose hands the balance shall be ; the statement is to be in the form approved by the National Debt Commissioners and a similar statement is to be sent to the inspection committee each year at the same time.(*c*) If the trustees neglect to make out and transmit this statement to the commissioners, the commissioners may close the account of the trustees.(*c*) Every depositor is entitled to a printed copy of the annual statement on payment of a penny.(*d*) In trustee savings' banks the rate of interest payable to the trustees by the Commissioners for the Reduction of the National Debt is 2*l*. 15*s*. per cent. per annum, and the rate payable to depositors in such banks must not exceed 2*l*. 10*s*. per cent. per annum.(*e*) The same rate of interest is payable on deposits in the post office savings' banks, but no interest is allowed on any amount less than a pound.(*f*)

Minors.—In the case of the accounts of minors, or of accounts standing in the names of a minor and any other

(*a*) 56 & 57 Vict. c. 69, s. 4.
(*b*) 26 & 27 Vict. c. 87, s. 7.
(*c*) *Ibid.* s. 55 ; 54 & 55 Vict. c. 21, s. 8.
(*d*) *Ibid.* s. 59.
(*e*) 51 & 52 Vict. c. 15, s. 5.
(*f*) 24 & 25 Vict. c. 14, s. 7.

party, either in a post office savings' bank or in a savings' bank established under the laws relating to savings' banks, the Postmaster-General in the one case, and the trustees of the savings' bank in the other, on the application in writing of the parent or other relative of the minor, if under seven years of age, and of the minor himself if above that age, and also of the other party, if any, in whose name the account may stand, shall issue a certificate for the transfer of such account, and of all money standing to the credit of such account, according to the provisions of the Act 24 Vict. c. 14, s. 10, anything in the rules of any savings' bank notwithstanding; and such account so transferred shall be opened in the post office savings' bank or other savings' bank to which the transfer is made in the name of such party, if any, and of the minor, or in the name of the minor alone, as the case may be; and the receipt of the party or parties making such application and receiving such transfer certificate shall be a sufficient discharge to the Postmaster-General and to such trustees, but the money so transferred shall not be withdrawn except with the consent of the Postmaster-General, or of any two trustees or managers of the savings' bank to which the transfer is made until the minor shall have attained the age at which it might have been withdrawn under the rules of the savings' bank from which it was transferred, a note whereof shall be made on the said certificate.(*g*)

Officers.—Every treasurer, actuary, or cashier, being intrusted with the receipt or custody of money subscribed or deposited for the purpose of the bank, or any interest or dividend from time to time accruing therefrom, and every officer receiving any salary or allowance for his services from the funds of the savings' bank, must give security by bond, with one or more sureties, to the Comptroller-General of the National Debt Office for the time

(*g*) 26 & 27 Vict. c. 14, s. 1.

being without fee or reward,(a) and the bond, when executed, is to be deposited with the Commissioners for the Reduction of the National Debt.(a)

With the view of securing savings' bank depositors against loss by the acts or misconduct of the officers employed, the Legislature has given a prior or precedent claim over their estate or goods in the event of their bankruptcy or death.

The provision is, that if any person appointed to any office in a savings' bank, and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his office or employment, any moneys or effects belonging to the bank, or any deeds or securities relating to the same, dies or becomes bankrupt or insolvent, or has any execution, or attachment, or other process issued against his lands, goods, chattels, or effects, or makes any assignment thereof for the benefit of his creditors, then his executors, administrators, or assignees, or other persons having legal right, according to the case, or the sheriff or other officer executing such process, must, within forty days after demand, made by two of the trustees of the bank, deliver and pay over all moneys and other things belonging to the bank to such person as the trustees may appoint, and pay out of his estate, assets, or effects, all money remaining due which such person received by virtue of his office or employment, before any other of his debts are paid or satisfied, or before the money directed to be levied by the process is paid over to the party issuing it, and all his assets, lands, goods, chattels, estates, and effects shall be bound to the payment and discharge thereof accordingly.(b)

A draper was appointed actuary and cashier of a savings' bank, a rule of which was, that one or more members of the committee should attend at the cashier's shop to receive the deposits ; this rule, however, was not attended to, and the cashier was permitted to receive the deposits. He

(a) 26 & 27 Vict. c. 87, s. 8. See also 54 & 55 Vict. c. 21, ss. 9, 10 (f).
(b) *Ibid.* s. 14.

became bankrupt, and the deposits were held not to be "moneys in his hands by virtue of his office," so as to be claimable in full by the bank.

The duty of the office of actuary did not include the receipt of money, which duty, by the rule, was imposed on one or more members of the committee, nor did the duty of cashier include the receipt of money for the same reason, for the duty of a cashier is to pay money, consequently, the moneys were not in his hands, at the time of his bankruptcy, *by virtue of his office*.(c)

In the case of the bankruptcy of any person in office in a savings' bank, the savings' bank can only be paid in full his debt to them, when they have conformed in all respects to the statute, and there has been no negligence or laches on the part of the managers or trustees of the institution.

Where a person on his appointment as treasurer of a savings' bank entered into the usual bond, but did not actually receive any money, the deposits being paid by the managers directly into a bank, of which he was a partner, to the credit of the trustees of a savings' bank, who were allowed interest on it, but he signed the monthly return to the National Debt Office, thereby acknowledging the balance to be in his hands as treasurer, on the bankruptcy of the bank, the savings' bank recovered in full.(d)

If an actuary, cashier, secretary or officer receives any sum or sums of money from or on account of a depositor or on account of the bank, and does not forthwith, or in the case of local receivers within the time specified in the rules, duly account for and pay over the same to the trustees or managers or to such persons as may be directed by the rules, he will on conviction be guilty of a misdemeanor.(e)

All officers upon demand are bound to account for and

(c) *Ex parte Fleet*, 4 De G. & S. 52; *The Dartford Savings' Bank*, see 1 Fonb. Bank. R. 137.
(d) *Ex parte Riddell*, 3 M. D. & De G. 80.
(e) 26 & 27 Vict. c. 87, s. 9.

deliver up all moneys, effects, funds or securities, books, papers or property, belonging to the bank in their hands, by order of not less than two trustees and three managers, or at any general meeting of the trustees or managers: on default, the trustees may exhibit a petition to the Quarter Sessions, who may proceed in a summary way, and make such order upon hearing all parties concerned, as they may think just, and such order will be final.(a)

Trustees.—All moneys, goods, chattels and effects whatever, and all rights or claims, belonging to a savings' bank are vested in the trustees for the time being, without a fresh assignment or conveyance being necessary on the death or removal of any one or more of them; (b) and in all criminal or civil proceedings shall be stated to be the property of the person or persons appointed trustee or trustees for the time being in his or their proper name without further description.(b)

No trustee or manager is personally liable, except for his own acts and deeds: he is not personally liable for anything done by him in virtue of his office, except in cases where he is guilty of wilful neglect or default.(c)

A trustee or a manager of a savings' bank in Ireland, having declared in writing under his hand deposited with the Commissioners for the Reduction of the National Debt, that he is willing to be answerable for a specific amount only, such amount being in no case less than 100*l.*, will not be liable to make good any deficiency arising in the funds beyond the amount specified.(d) This provision is not applicable to managers or trustees of savings' banks in England.

Nevertheless, every trustee and manager is personally responsible and liable for all moneys actually received by him on account of or for the use of the bank, and not paid

(a) 26 & 27 Vict. c. 87, s. 13.
(b) *Ibid.*, s. 10.
(c) *Ibid.*, s. 11.
(d) *Ibid.*, s. 12.

over or disposed of according to the rules.(c) A trustee or manager of a savings' bank who neglects or omits to comply with the rules and regulations of the savings' bank, under section 11 of the Savings Bank Act, 1863, may be compelled under section 165 of the Companies Act, 1862, to pay an adequate sum towards the assets of the bank by way of compensation for any loss occasioned to the bank by his neglect or omission.(e)

But a trustee or a manager who is robbed of moneys before the time for paying them over, according to the rules, has elapsed, would not be personally liable to replace or restore the amount.(f)

A trustee of a savings' bank may be indicted under the 24 & 25 Vict. c. 96, s. 80, as a fraudulent trustee for the misappropriation of moneys deposited with him.(g)

Winding up of Savings' Banks.—By the Trustee Savings Bank Act, 1887, it is declared that a trustee savings' bank is an unregistered association, which may be wound up under the provisions of the Companies Act, 1862, and amending Acts, and a petition for winding up any such bank may be presented either by any person authorised under those Acts to present a petition for winding up a company or by the Commissioners for the Reduction of the National Debt, or by a commissioner appointed under the above-mentioned Act.(h)

No trustee or manager of a savings' bank who has incurred personal liability within the exceptions from the protection conferred by section 11 of the Trustee Savings Bank Act, 1863, can by reason of such liability be made a contributory in the winding up of the savings' bank, or be called upon to contribute to the costs of the liquidation.(i)

(e) In *re Cardiff Savings' Bank, Davies' Case*, 45 Ch. D. 537. Section 165 of the 1862 Act is now repealed, but substantially re-enacted by section 10 of 53 & 54 Vict. c. 63.
(f) *Walker* v. *Guarantee Association*, 18 Q. B. 277.
(g) *Reg.* v. *Fletcher*, 31 L. J. M. C. 206.
(h) 50 & 51 Vict. c. 47, s. 3.
(i) *Davies' Case, supra.*

Post Office Savings' Banks.—Post Office Savings' Banks are by recent legislation practically governed by the same rules so far as applicable as trustee banks, as will have appeared by this chapter. The chief distinction, of course, is that a Post Office Savings' Bank has the direct security of the State for the repayment of the deposits.(*a*)

Military and Naval Savings' Banks.—The Legislature has provided by special measures for the establishment of military savings' banks,(*b*) of savings' banks for seamen :(*c*) and of savings banks for the Royal Navy and Marines,(*d*) all of which are exempted from the operation of the enactments respecting savings' banks in general.

For the law regulating these the reader is referred to the undermentioned statutes.(*f*)

For other points of minor importance the reader is referred to the statutes affecting savings banks.(*e*)

(*a*) See Post Office Banks Acts, 1861—91; "Chitty's Statutes," 5th edit. vol. 11.

(*b*) 22 & 23 Vict. c. 20.

(*c*) 57 & 58 Vict. c. 60, ss. 148--154.

(*d*) 29 & 30 Vict. c. 43.

(*e*) Exemptions from stamp and other duties in favour of savings' banks, 26 & 27 Vict. c. 87, s. 60; from income tax, 5 & 6 Vict. c. 35, s. 88.

(*f*) By the recent rules of the War Office, any soldier enlisted on or before the 31st March, 1896, will be allowed to use the military savings' banks provided he was a depositor on that date, and remains a depositor on the 31st March, 1897; or, not being a depositor on the 31st March, 1896, he opens an account within a year from that date, and remains a depositor on the 31st March, 1897. No account will be opened or re-opened after the 31st March, 1897.

Men enlisted subsequently to the 31st March, 1896, will not be allowed to use the military savings' banks, but special arrangements have been made for enabling soldiers serving abroad to remit, through the public accounts, savings for investment in the Post Office Savings' Bank.

CHAPTER XXX.

THE RELATIONS OF PUBLIC BODIES, COMPANIES, AND OF PERSONS FILLING REPRESENTATIVE CHARACTERS TO BANKERS.

Trustees and Commissioners of Public Bodies.—Trustees and commissioners of public bodies, provided they act in accordance with their statutory powers, are, as a rule, exempt from personal liability.(*f*) They may, however, make themselves personally liable by pledging their own individual credit, and not that of the funds at their disposal; or, if they have acted beyond their authority, as, for instance, by borrowing money not in conformity with their borrowing powers, on an implied warranty that they possessed the authority they held themselves out as possessing.(*g*)

Companies.—In dealing with joint stock companies it is material for bankers, before they make advances, to ascertain whether the company has power to borrow money; (*h*) but they need not do more than ascertain the constitution of the company, as contained in the memorandum and articles or Acts regulating it, and if they find in them authority to borrow, though only on certain conditions, they have a right to infer that those conditions have been complied with, if everything is *ex facie* regular.(*i*) Where

(*f*) See 10 & 11 Vict. c. 16, s. 60.
(*g*) See *Parrot* v. *Eyre*, 3 M. & Sc. 857; 10 Bing. 283; *Eaton* v. *Bell*, 5 B. & Ald. 41; *Higgins* v. *Livingstone*, 4 Dowl. 355.
(*h*) *Ex parte Chippendale*, 4 De G., Mac. & G. 19; *Burmester* v. *Norris*, 6 Exch. 796; *In re National Permanent Benefit Building Society*, L. R. 5 Ch. 309.
(*i*) *Chapleo* v. *Brunswick Building Society*, 6 Q. B. D. 715; *Royal British Bank* v. *Turquand*, 6 E. & B. 327; *Howard* v. *Patent Ivory Company*, 38 Ch. D. 156. But where the lender has constructive notice from the company's articles that the borrowing power of its directors is limited to a certain amount, unless extended by resolution, he is not entitled to assume that the power has been so extended, if no copy of any such resolution is to be found recorded by the Registrar of Joint Stock Com-

the company has no power to borrow money the lender cannot recover the advance from the company; but if the sum so lent has gone to pay creditors of the company he is entitled to be subrogated to the rights of such creditors so paid.(*a*) Whether the directors of a company can bind the company by borrowing money depends upon the nature of its business, and upon its charter, Act of Parliament, deed of settlement or regulation.(*b*) Directors of a trading company have implied powers to borrow money to a reasonable amount for the necessities of the company.(*c*) It has been decided that the effect of a company overdrawing its banking account is the same as a borrowing by them from the bank, and that an overdraft is equivalent to a loan.(*d*) Where directors borrow in excess of the limited power of borrowing conferred upon *them* by the articles of association the act is *ultra vires* the directors only, and may nevertheless be ratified by the company, and so become binding upon it. *Aliter*, if the *company's* power to borrow is exceeded.(*e*)

Liability of Directors.—Directors who in excess of their authority borrow money may be rendered liable in damages for breach of an implied warranty that they possessed the authority to borrow they represented themselves as possessing.(*f*) And the fact that they

panies. *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 366; distinguishing *Royal British Bank* v. *Turquand*, *infra*.

(*a*) *Brooks* v. *Blackburn Benefit Society*, 9 App. Cas. 865; *National Permanent Benefit Society*, L. R. 5 Ch. 309; *Cork and Youghal Railway Company*, L. R. 4 Ch. 748.

(*b*) *Baroness Wenlock* v. *River Dee Company*, 10 App. Cas. 359; *Ashbury Company* v. *Riche*, L. R. 7 H. L. 653.

(*c*) *In re International Life Assurance Company*, L. R. 10 Eq. 312; *Ex parte Pitman*, 12 Ch. D. 707, 712; *English Steamship Company* v. *Rolt*, 17 Ch. D. 715; *General Auction Estate Company* v. *Smith* [1891], 3 Ch. 432. As to the power of mortgaging by deposit, see *ante*, p. 168.

(*d*) *Brooks and Company* v. *Blackburn Benefit Society*, 9 App. Cas. 865; disapproving of *Waterlow* v. *Sharp* L. R., 8 Eq. 501; *In re Cefn Cilcen Mining Company*, L. R., 7 Eq. 90. See also *Looker* v. *Wrigley*, 9 Q. B. D. 397.

(*e*) *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 366, 380. See also on this subject, *Royal British Bank* v. *Turquand*, 5 E. & B. 248; 6 E. & B. 327.

(*f*) *Richardson* v. *Williamson*, L. R. 6 Q. B. 276; *Beattie* v. *Lord Ebury*, L. R. 7 Ch. 777, 800.

did not know that they were exceeding their authority is immaterial.(*g*)

But the representation must be as to a matter of fact, and not of law.(*h*)

Three directors of a railway company opened, on behalf of the company, an account with a bank, and sent a letter signed by the three as directors, requesting the bank to honour cheques signed by two of the directors and countersigned by the secretary. The account having been largely overdrawn by means of such cheques, the bank sued the company, recovered judgment, and issued an *elegit*. The proceeds being insufficient to satisfy the debt, the bank filed a bill in equity to make the directors personally liable. It was determined that the letter did not make the directors personally responsible for the debt, for that, assuming the letter to contain a representation that the directors had power to overdraw the account, and such representation to be erroneous, this was not a misrepresentation of fact which the persons making it were bound to make good, but only a mistaken representation of the law; and, moreover, that even if it had been such a false representation as the directors were bound to make good, the bank would have had no claim against them, since it had been able to enforce the same remedies against the company as if the representation had been true.(*h*)

Two of the directors of a joint stock company, by a letter to the company's bankers, notified that their manager had authority to draw cheques on account of the company. Such two directors did not form a majority of the directors of the company, as required by their Act of incorporation, so as to bind the company. Although the company's account was at the time overdrawn, and that fact was known to the two directors, the bankers honoured the manager's cheques on the authority so given to them. In an action by the bank against the two directors for advances

(*g*) *Firbank's Executors* v. *Humphreys*, 18 Q. B. D. 54.
(*h*) *Beattie* v. *Lord Ebury*, L. R. 7 Ch. 777; L. R. 7 H. L. 102; 41 L. J. Ch. 804.

made on account of the company upon the faith of their letter :—Held, that there was an implied warranty on their part, and that they were personally liable to the bank to the extent of the sums overdrawn by the manager subsequently to the date of their letter.(a)

Trustees, Executors, and others.—For the guidance of trustees, executors, and other persons filling representative characters, in dealing with bankers, and *vice versâ*, it will be useful to state some principles, with brief illustrations.

A trustee or executor who has deposited trust money in a bank *pending* investment, and not for an undue and unnecessary period, will not be liable on failure of the bank. But if a trustee or executor has unnecessarily left trust moneys in the hands of a banker which he ought to have invested, and has paid funds into a bank for the purpose of investment, and neglected for some time to make inquiries as to such investment, he will be liable in the event of the bank's failing, and this notwithstanding the usual clause of indemnity against the acts and defaults of others.(b)

The following cases will help to illustrate these rules, though on their perusal it will be seen that the question of the trustees' liability depends entirely on the facts of each particular case :—

A will appointing trustees, duly authorised them to invest in parliamentary stocks or funds, or in freehold, copyhold, or leasehold hereditaments.

The will contained a proviso that no trustee should be answerable for any banker, broker, or other person in whose hands any money might be deposited for safe

(a) *Cherry* v. *Colonial Bank of Australasia*, L. R. 3 P. C. 24; 6 Moore, P. C. C. (N.S.) 235. See also *Weeks* v. *Propert*, L. R. 8 C. P. 427; *Richardson* v. *Williamson*, L. R. 6 Q. B. 276; *Whitehaven Joint Stock Bank* v. *Reed*, 54 L. T. 360; *Chapleo* v. *Brunswick Building Society*, 6 Q. B. D. 696; *Cross* v. *Fisher*, 65 L. T. 114; *McCollin* v. *Gilpin*, 5 Q. B. D. 390.

(b) *Fenwick* v. *Clarke*, 31 L. J. Ch. 728; see *Challen* v. *Shippam*, 4 Hare, 555; *Rehden* v. *Wesley*, 29 Beav. 213; *Matthews* v. *Brise*, 6 Beav. 239.

custody or otherwise. The trustees left the sum of 500*l.* on deposit at a bank, by way of interim investment, whilst they looked for a mortgage, for fourteen months, when the bank failed. Upon the question whether the trustees were liable for the loss thereby occasioned:—Held, that fourteen months was too long for the trustees to leave trust moneys on deposit at a bank; that if after six months they could not get a mortgage, they ought to have invested the money in consols; that from the moment they left it too long on deposit, they became answerable for the consequences of their default, and were, therefore, liable for the sum lost to the trust estate.

The present Lord Justice KAY, in giving judgment in this case, said: "It is extremely difficult in these cases to know where to draw the line. Here there is an estate producing 700*l.* a year. A mortgage of 500*l.* is paid off, and the trustees pay that money into a bank for the purpose of getting another mortgage. The question is whether it was within their power, as trustees, to leave that sum in the bank for fourteen months. It seems to me that that was too long. If after six months they could not get a mortgage, they ought to have invested the money in consols. Without attempting to draw a hard and fast line—for I consider that each of these cases must be judged on its merits—I say that leaving that money in the bank for fourteen months was leaving it there too long."(*c*)

A., at his death, had about 2,000*l.* in the hands of his bankers, and his executors paid some moneys, which they had received on account of the estate, to their account at the same bankers, and drew out such sums as they required from time to time. About nine months after his death the bankers became bankrupt, having, at that time, a balance of about 2,000*l.* belonging to the estate in their hands, and of which the sum of 1,000*l.* was ultimately lost by their bankruptcy. The Master, on a reference, found that there

(*c*) *Cann* v. *Cann*, 51 L. T. 770.

were not any purposes of their trust which rendered it necessary for the executors to retain the balance with the bankers, but the Court was of opinion that the executors were not answerable for the loss.(*a*)

Executors of a testator, who died in 1862, had, in March, 1865, a balance of nearly 3,000*l.* at their bankers, who had been his bankers for twenty years. The estate realized more than 30,000*l.*, and considerable sums were from time to time required to be paid into and out of the account, and the balance was larger than it would otherwise have been in expectation of a mortgage having to be paid off. A loss having resulted from the failure of the bank, the executors were held not justified in keeping a balance of more than 1,000*l.*, and the loss upon the excess above that sum had to be borne by them.(*b*)

A sole executor and trustee of personal estate of a testator, in trust for his widow for her life, and after her death, to pay or otherwise divide it in equal shares amongst his children, paid 300*l.*, part of the assets, into an old-established bank at Chichester, who had for many years been his own bankers, with a direction in writing to invest the money in consols in his name for the purposes of the trust. Instead of doing so, the bankers, without his knowledge, opened a new account with him, in which they gave him credit for 300*l.*, the executor and another person, his partner, having a joint account with the bank, in which no notice of the 300*l.* appeared. The executor, relying on the investment having been duly made, never called for the transfer note, nor made any other inquiry, and remained in ignorance that the investment had not been made until the bankers became bankrupt, a period of nearly five months. The executor proved for the 300*l.* under the *fiat*, and insisted that he was not bound to account for more than the dividend received, alleging that the employment of bankers was the necessary and only

(*a*) *Johnson* v. *Newton*, 11 Hare, 160.
(*b*) *Astbury* v. *Beasley*, 17 W. R. 638.

course available to a person resident in the country, to invest money in the Government funds; but he was decreed to pay the whole 300*l.* with interest at 4 per cent.(*c*)

By a decree made in an administration suit, a contract for the sale of property belonging to an estate was to be carried out by a trustee, but there were no directions given as to the payment or receipt of the purchase money. The trustee, with the acquiescence of the solicitor of the testator, and others interested under his will, deposited the purchase money in a private bank, at interest. The bank afterwards failed: it was held, that the trustee was not liable for the money so lost; and he would not have been liable even if the money had been deposited so as not to be repayable on demand.(*d*)

Mixing Trust Property.—If money held by a person in a fiduciary character, though not as trustee, has been paid by him to his account at his bankers, the person for whom he held the money can follow it, and has a charge on the balance in the banker's hands.(*e*)

Clayton's Case.(*f*)—Where a person who holds money as a trustee, or in a fiduciary character, pays it to his account at his bankers, and mixes it with his own money, and afterwards draws out sums by cheques in the ordinary manner, the rule in *Clayton's Case*, attributing the first drawings out to the first payments in, does not apply; and the drawer must be taken to have drawn out his own money in preference to the trust money.(*g*) But, as between two *cestuis que trust* whose money the trustee has paid into his own account at his bankers, the rule in *Clayton's Case* does apply, so that the first sum paid in will be held to have been first drawn out.(*h*)

(*c*) *Challen* v. *Shippam*, 4 Hare, 555.
(*d*) *Wilkes* v. *Groome*, 3 Drew, 584.
(*e*) *In re Hallett's Estates*, 13 Ch. D. 696, dissenting from *Ex parte Dale*, 11 Ch. D. 772.
(*f*) 1 Mer. 572.
(*g*) *In re Hallett's Estates*, *supra*; *Pennell* v. *Duffell*, 4 De G. M. & G. 872, not followed.
(*h*) The same, affirmed in *Hancock* v. *Smith*, 41 Ch. D. 456. In the

Where a customer has opened with his bankers separate accounts specially headed with the name of the trust to which the moneys paid into those accounts belong, the bankers are not at liberty, upon the bankruptcy of the customer, to apply those moneys in payment of the balance due to them upon the customer's overdrawn private account.(*a*)

So if an account is opened as an executorship account, the bank is affected with notice of all such equities as may be attaching thereto.(*b*)

Payment to Trustees.—One of several trustees cannot, unless expressly authorised by the settlement to do so (or unless the circumstances are such as to make it imperatively necessary), give a good receipt of capital by himself, and his co-trustees must join.(*c*)

Formerly at law the signature of a trustee was conclusive evidence that he had received the money; but in equity he was and of course still is permitted to show that he merely joined in the receipt for the sake of conformity, and that he never in fact received the money.(*d*) A trustee, therefore, may safely permit his co-trustee to

very recent case of *In re Stenning* [1895], 2 Ch. 433, the facts were as follows :—A solicitor paid money which he had received for a client to his own banking account. From that time up to the death of the solicitor there was always to the credit of the account, a balance exceeding the sum so paid in. But on many days during that period, the credit balance was less than the amount of other clients' moneys which the solicitor had paid in subsequently to his payment of the money of the first client and had not withdrawn :—Held, distinguishing *Hancock* v. *Smith*, that the rule in *Clayton's Case* applied, and that the money of the first client must be taken to have been drawn out by the solicitor, and, therefore, not to have formed part of the balance to the credit of the account at the time of his death; and, consequently, that the first client was not entitled to be paid out of that balance specifically.

(*a*) *Ex parte Kingston*, L. R. 6 Ch. 632 ; 40 L. J. Bank. 91.

(*b*) *Bailey* v. *Finch*, L. R. 7 Q. B. 34 ; 41 L. J. Q. B. 83 ; 20 W. R. 294.

(*c*) *Walker* v. *Symonds*, 3 Sw. 63 ; *Lee* v. *Sankey*, L. R. 15 Eq. 204 ; *Luke* v. *South Kensington Hotel*, 11 Ch. D. 121 ; *Re Flower and Metropolitan Board of Works*, 27 Ch. D. 592. As to receipt of incomes, see *Townley* v. *Sherbourne*, *post*; *Gough* v. *Smith*, W. N. (1872), p. 18.

(*d*) *Brice* v. *Stokes*, 2 W. & T. L. Cas. 865 ; *Fellows* v. *Mitchell*, 1 P. & W. 81.

receive or *collect* trust moneys.(*e*) In the case of executors, inasmuch as one executor can alone give a good discharge, it was formerly thought this privilege did not attach, but the rule seems now to be as follows: "If the receipt be given for the purpose of mere form, the signing will not charge the person not receiving; but if it be given under circumstances purporting that the money, though not actually received by both executors was *under the control of both*, such a receipt shall charge; and the true question in these cases seems to be whether the money was under the control of both executors."(*f*) A trustee is, moreover, liable if he permit his co-trustee to *retain* trust funds for a longer period than necessary.(*g*)

By section 20 of the Trustee Act, 1893, it is enacted that the receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him, under any trust or power, shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application, or being answerable for any loss or misapplication thereof.(*h*)

Power to Authorise Receipt of Money by Banker or Solicitor.—A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee; and a trustee shall not be chargeable with a breach of trust, by reason only of his having made or concurred in making any such appointment.(*i*)

Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not

(*e*) *Townley* v. *Sherbourne*, Bridg. 35.
(*f*) Per Lord REDESDALE, in *Joy* v. *Campbell*, 1 Sch. & L. 341.
(*g*) *Brice* v. *Stokes*, *supra*.
(*h*) 56 & 57 Vict. c. 53. As to implied indemnity of trustees, see section 24.
(*i*) Trustee Act, 1893, s. 17 (2).

been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee.(*a*)

Drawing of Cheques by Trustees or Executors.—Trustees, in whose names trust moneys are standing in a bank, should not authorise the bank to cash cheques drawn by only one of them.(*b*)

In the absence of any special direction, the banker is entitled to refuse to cash a cheque not signed by all the trustees.(*c*)

Where executors have opened an account at a bank in their joint names, payment of a cheque drawn by one of them will be a good payment by the banker as against the others: but if three executors have an account in their names with a banker, and one draws a cheque, it seems the bankers may refuse to cash it, if they have received notice from *one* of the others not to part with the money.(*d*) A banker is not under any obligation to ascertain more than that the executor or administrator has a *primâ facie* title.(*e*)

As has been already stated, an executor placing money which he ought to have invested in his banker's hands mixed with his own account, is liable for the amount on the failure of the banker.(*f*)

The mere fact that an executor has opened an account with a banker as executor, does not entitle the banker to rank as a creditor upon the testator's estate in respect of an overdrawn balance of the account.(*g*)

(*a*) Trustee Act, 1893, s. 17 (2) (3).
(*b*) See *Flower* v. *Metropolitan Board of Works*, 27 Ch. D. 592.
(*c*) See *Husband* v. *Davis*, 20 L. J. C. P. 119.
(*d*) *Gaunt* v. *Taylor*, 2 Hare, 413.
(*e*) See 20 & 21 Vict. c. 77, ss. 77, 78.
(*f*) *Fletcher* v. *Walker*, 3 Mad. 73.
(*g*) *Farhall* v. *Farhall*, L. R. 7 Ch. 123; 41 L. J. Ch. 146.

CHAPTER XXXI.

LIBEL ON BANKERS.

BANKERS, in partnership, could always join in maintaining an action for a libel against them in respect of their business and touching their credit, without disclosing the ratios or shares in which each of them was interested in the concern ;(*h*) but until recently only joint damages could have been given in such an action, and any separate damage for injury caused to any individual partner was not recoverable by him. But now, by Order XVI., rule 1, of the Judicature Acts, claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. Consequently in a case like that under consideration, where one partner has suffered some especial injury, he may now recover damages in respect thereof as well as joint damages with the firm.(*i*)

The firm itself, however, cannot recover damages for any private injury caused to one of its partners, nor, on the other hand, where one partner has been libelled *quà* his private capacity, can he recover damages caused to the firm.

To say of a banker that he has suspended payment is actionable : for it is saying that he cannot pay his debts ; and a temporary inability to pay debts is insolvency ; and such action is maintainable, without alleging or showing special damage ;(*k*) and it has been held, that where such an imputation has been made against one partner, the credit

(*h*) *Ward* v. *Smith*, 6 Bing. 749 ; 4 C. & P. 302 ; *Le Fanu* v. *Malcolmson*, 1 H. L. Cas. 637 ; *Forster* v. *Lawson*, 3 Bing. 452 ; 11 Moore, 360 ; *Robinson* v. *Marchant*, 7 Q. B. 918 : *Haythorn* v. *Lawson*, 3 C. & P. 196.

(*i*) See *Booth* v. *Briscoe*, 2 Q. B. D. 496 ; 25 W. R. 838 ; *Sandes* v. *Wildsmith* [1893], 1 Q. B. 771 ; *Gort* v. *Rowney*, 17 Q. B. D. 625.

(*k*) *Forster* v. *Lawson*, *supra*.

of the firm is also reflected upon, and that the partner, the firm, or both, may sue for damages.(*a*)

Plaintiffs should not join where they allege several different slanders, some of one plaintiff and some of the others.

H. and Sons were in the habit of receiving in payment from their customers cheques on various branches of a bank. Having had a squabble with the manager of that bank, H. and Sons sent a printed circular to a large number of their customers (who knew nothing of the squabble) : "H. and Sons hereby give notice that they will not receive in payment cheques drawn on any of the branches of the" bank. The circular became known to other persons ; there was a run on the bank and loss inflicted. The bank having brought an action against H. and Sons for libel, with an innuendo that the circular imputed insolvency :— Held, affirming the decision of the Court of Appeal (Lord PENZANCE dissenting), that in their natural meaning the words were not libellous ; that the inference suggested by the innuendo was not the inference which reasonable persons would draw ; that the onus lay on the bank to show that the circular had a libellous tendency ; that the evidence, consisting of the circumstances attending the publication, failed to show it ; that there was no case to go to the jury ; and that the defendants were entitled to judgment.(*b*)

(*a*) *Harrison* v. *Berington*, 8 C. & P. 708.
(*b*) *Capital and Counties Bank* v. *Henty*, 7 App. C. 741 ; 52 L. J. Q. B. 232 ; 47 L T. 62.

CHAPTER XXXII.

THE BANKERS' BOOKS EVIDENCE ACT.

THIS Act(*c*) was passed to remove the inconvenience caused to bankers by having to produce their books in legal proceedings, and to facilitate the proof of the matters and transactions therein recorded.(*d*)

By section 3 a copy of any entry in a banker's book is made receivable in all legal proceedings, and for or against anyone,(*e*) as *primâ facie* evidence of such entry and of the matters, transactions, and accounts therein recorded; but by section 4 such a copy shall not be so received, unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

Proof is further required by section 5 that the copy has been examined with the original entry and is correct, and such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

A banker or officer of a bank is not, in any legal proceeding to which the bank is not a party, compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness and prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause (section 6).

By section 7, on the application of any party to a legal proceeding, a court or judge may order that such party be

(*c*) 42 & 43 Vict. c, 11.

(*d*) See *Arnott* v. *Hayes*, 36 Ch. D. 731; *Emmott* v. *Star Newspaper Company*, 62 L. J. Q. B. 77; *Parnell* v. *Wood* [1892], P. 137.

(*e*) *Harding* v. *Williams*, 14 Ch. D. 197.

at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceding.(*a*)

This order may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.(*b*)

In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers, and having duly made a return to the Commissioners of Inland Revenue; and also any savings' bank certified under the Acts relating to savings' banks, and also any post office savings' bank.(*c*)

The expression "banker's books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

It has been held that the court has power to order inspection of entries relating to accounts kept in the names of persons other than the parties to the action.(*d*)

If the banker does not choose to follow out the provisions of the Act he is left with the old burden of personal attendance and production of the books. If the banker will not attend or supply the copies required at the trial he must be subpœnaed to produce the books as before the Act.(*e*)

(*a*) Great caution should be exercised by the court in acting under this power (per Lord BOWEN in *Arnott* v. *Hayes*, *ante*). Certainly the case of a defendant seeking to justify a libel alleging the financial unsoundness of the plaintiff's position, and for that purpose taking out a summons for an order to inspect and take copies of the plaintiff's banking account, is not one in which the discretion should be exercised, *Emmot* v. *Star Newspaper Company*, *ante*); nor will the application be granted where its object is to obtain inspection of the parts of the pass book which the plaintiff has sealed up and sworn to be irrelevant. *Parnell* v. *Wood*, *ante*. See also *Perry* v. *Phosphor Bronze Company*, 71 L. T. 854; 14 Rep. 351; *The Staffordshire Tramway Company* v. *Ebbsmith* [1895], 2 Q. B. 669.

(*b*) An order giving liberty to inspect a banker's books and to take copies of entries may be made *ex parte* and without evidence; though generally it is better that notice of the application should be served on the person whose account is to be inspected, and the court may require evidence of the *bonâ fides* of the application and the materiality of the inspection. *Arnott* v. *Hayes*, *ante*. In proceedings in England a judge may order inspection of banker's books in Scotland. *Kissam* v. *Link* [1896], 1 Q. B. 574.

(*c*) Section 9. This section further deals as to the manner of proving that the return has been made, that the savings' bank is duly certified, and that a bank is a post office savings' bank.

(*d*) *Howard* v. *Beall*, 23 Q. B. D. 1.

(*e*) Per Lord COLERIDGE in *Emmott* v. *Star Newspaper Company*, *ante*.

CHAPTER XXXIII.

CRIMINAL LIABILITY OF BANKERS.

A CLEAR opinion was expressed by two judges in a case already referred to,(*f*) that a banker who negotiated bills intrusted to his care, knowing himself to be on the eve of bankruptcy, would (notwithstanding that it was the usage of the county of Lancaster amongst bankers) run great hazard of incurring the penalties enacted in 52 Geo. 3, c. 63, a statute passed to prevent the embezzlement of securities for money deposited for safe custody or for any special purpose with bankers. That statute is now repealed; but similar provisions were first substituted by the 7 & 8 Geo. 4, c. 29, ss. 49, 50, and by the 20 & 21 Vict. c. 54, which were subsequently consolidated in 1861 in one statute.

The consolidating enactment, 24 & 25 Vict. c. 96, s. 75, is as follows:—

As to Frauds by Agents, Bankers, or Factors,—Whosoever, having been intrusted, either solely or jointly with any other person, as a *banker*, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing, to apply, pay, or deliver such money or security, or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose, or to any person specified in such direction, shall, in violation of good faith and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof respectively; and whosoever, having been intrusted

(*f*) *Thompson* v. *Giles*, 2 B & C. 422, 434, *ante*, p. 138.

either solely, or jointly with any other person, as a *banker*, merchant, broker, attorney, or other agent, with any chattel or valuable security,(*a*) or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company, or society, for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than three(*b*) years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

But nothing in this section contained, relating to agents, shall affect any trustee in or under any instrument whatso-

(*a*) By section 1, the term "valuable security" is defined to include any order, Exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom or of Great Britain, or of Ireland, or of any foreign state; or in any fund of any body corporate, company or society, whether within the United Kingdom or in any foreign state or country; or to any deposit in any bank, and also any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of money, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state; and any document of title to lands or goods. A document which is a complete bill of exchange in all respects except that it wants the signature of the drawer, is, when in the hands of the intended drawer, a security for the payment of money within the 75th section. *R.* v. *Bowerman* [1891], 1 Q. B. 112; 60 L. J. M. C. 13.

(*b*) The minimum term of penal servitude imposed by this section was, as stated in the text, three years; by 27 & 28 Vict. c. 47, s. 2, it was increased to five years, but again reduced to three by 54 & 55 Vict. c. 69.

ever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee, in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any *banker*, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.

By section 76, whosoever, being a *banker*, merchant, broker, attorney or agent, and being intrusted, either solely or jointly with any other person, with the property(*c*) of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor, and liable to the same punishment as under section 75.(*d*)

As to the interpretation of the expression "intrusted with property, &c., for safe custody" under this section, the following cases are of interest:—

Trust money had been invested on mortgage, which was paid off and the money left in the hands of the defendant,

(*c*) By section 1, the term "property" includes every description of real and personal property, money, debts, legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

(*d*) This misdemeanor and that mentioned in section 75 are not triable at quarter sessions: 24 & 25 Vict. c. 96, s. 87.

the solicitor to the trust, who wrote to the person beneficially interested :—" R.'s money was paid on 6th April. Let me know how you would like it invested, whether in the funds or on mortgage." The answer dated 9th April was :—" Will consult G. at once about the money, and let you know. I do not wish it placed in the funds. I am very glad it is paid over, and hope it will be well secured this time." At or very near the date of these letters it was clear that the defendant had fraudulently appropriated the money to his own use. It was held that this was a fraudulent conversion to his own use of property intrusted to the defendant for safe custody within this section.(*a*) But where a solicitor was intrusted by a client with money to invest on mortgage on the client's behalf, and he, instead of doing so, fraudulently appropriated the money to his own use, it was held that he was not intrusted with such money for " safe custody " within this section.(*b*)

By section 85, nothing in these sections shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy or insolvency, and no person shall be liable to be convicted by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any Court of Law or Equity, in any action, suit or proceeding, which shall have been *bonâ fide* instituted by any party aggrieved, but he is not now excused by reason of his having first disclosed the same, in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy or insolvency. A statement or admission made by any person in any such compulsory examination

(*a*) *R.* v. *Fullagar*, 14 Cox. 370 (C. C. R.).
(*b*) *R.* v. *Newman*, 8 Q. B. D. 706 ; 51 L. J. M. C. 87. See also *R.* v. *Cooper*, L. R. 2 C. C. R. 123 ; *R.* v. *Tatlock*, 2 Q. B. D. 157.

in bankruptcy is not, however, admissible in evidence against him in respect of misdemeanors referred to in section 85.(c)

By section 86, nothing in these sections contained, nor any proceeding, conviction or judgment, to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by any offence against any of the said sections might have had if the Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in these sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

The liability affecting directors for making false reports of the solvency of their banks, and the prosecution and punishment of delinquent directors, officers, and managers of insolvent banking companies on winding-up, will form the subject of a separate consideration.

(c) 53 & 54 Vict. c. 71, s. 27. This alteration in the law has rendered comparatively unimportant, the cases of *R.* v. *Strahan and Others*, 7 Cox C. C. 85; and *R.* v. *Sheen*, 28 L. J. M. C. 91; and they have, therefore, been eliminated from the text of the present edition. The latter case may, however, be an authority as to what is a "first disclosure" under the part of section 85 which is still unrepealed, but the case was decided on the repealed portion of the section.

CHAPTER XXXIV.

DISCOUNTS.

MUCH of the business of bankers consisting in the discounting of bills of exchange, it is necessary to state some points of the law affecting this matter.

The rule has been stated, that if a person holding a bill of exchange delivers it to a banker to be discounted, or if, by the course of dealing between the customer and the banker, bills received by the latter, on account of the former, are considered by both parties as cash, *minus* the discount, so that the customer is at liberty to draw on the banker, as against those bills, beyond the amount of actual cash that may be standing to his account in the books, then, in the event of the bankruptcy of the banker, the assignees of the bankrupt are entitled to the bills. For where the banker discounts a bill for a customer, giving him credit for the amount of the bill, and debiting him with the discount, there is a complete purchase of the bill by the banker, in whom the whole property and interest in it vest, as much as in any chattels he possesses.(*a*)

Therefore, discounting in this way makes the banker *the purchaser of the bill.*

If, moreover, a person discounts bills with his bankers, and receives as part of the discount other bills not indorsed by the bankers, and these latter bills turn out to be bad, the bankers are not liable; for, having taken them without indorsement, the holder takes the risk on himself, inasmuch as the bankers, by not indorsing them, have refused to pledge their credit to their validity, and the transferee must be taken to have received them on their own credit only.(*b*)

(*a*) *Carstairs* v. *Bates*, 3 Camp. 301. See *Ex parte Wakefield*, 1 Rose, 242; *Thompson* v. *Giles*, 2 B. & C. 422, and *ante*, p. 135.

(*b*) *Fydell* v. *Clark*, 1 Esp. 447; *Emly* v. *Lye*, 15 East 7; *Bank of*

So a banker discounting a bill, whether for a customer or for a stranger, there being no indorsement by the customer or stranger, and the bill not being given in payment of an antecedent debt, is a mere purchaser, and, on the bankruptcy of the acceptor, has no recourse against the party from whom he took it.(*c*)

A manager of a banking company had permission to carry on his separate trade; as a trader, he dealt with the company on the terms usual between banker and customer, and being possessed of certain bills in his character of trader, drawn and accepted by firms of good reputed credit, he deposited them without indorsing them, and obtained an advance upon them, his account at the time being already slightly overdrawn; it was held that this transaction was a loan, and not a discount, and upon the bankruptcy of the drawers and acceptors, the manager was held bound to make good the loss to the bank.(*d*)

Bankers discounting a customer's bills at a time when his account is largely overdrawn, and carrying the amount to the credit of his account, are holders for value, though no money actually pass.(*e*)

Presumption in favour of Bankers.—Bankers discounting bills will *primâ facie* be taken to have discounted them in good faith. Thus, where a clerk was sent by his master, a customer of a bank, to ask for discount of a bill, but with orders to tell them, when he asked for it,

England v. *Newman*, 1 Ld. Raym. 442; *Ex parte Blackburne*, 10 Ves. 206; and see *Ex parte Egyptian Company*, 4 Ch. App. 125.

(*c*) *Bank of England* v. *Newman*, 1 Ld. Raym. 442; 12 Mod. 241; Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 58.

(*d*) *Watkin* v. *Campbell*, 1 Jur. (N.S.) 131.

(*e*) *In re Carew*, 31 Beav. 39. For cases supporting the rule that a fluctuating balance may be a valuable consideration for a bill, see *Pease* v. *Hirst*, 10 B. & C. 122; *Richards* v. *Macey*, 14 M. & W. 484. The onus of proving such a consideration is upon the payee. *In re Boys*, L. R. 10 Eq. 467; 39 L. J. Ch. 655. When a customer pays a cheque to his banker, intending that it should at once be placed to his credit, and it is so placed, the bankers become immediately holders of the cheque for value, even though the customer's account is not overdrawn. *Ex parte Richdale*, 19 Ch. D. 409: see also *National Bank* v. *Silke* [1891], 1 Q. B. 435; *Royal Bank of Scotland* v. *Tottenham* [1894], 2 Q. B. 715.

the particulars of an arrangement between the holder and his master, the Court would not presume that the clerk told the bankers (who discounted the bill) those circumstances, but, on the contrary, presumed that they *bonâ fide* discounted the bill without notice of those circumstances, in the absence of proof to the contrary.(*a*) But when A. fraudulently obtained possession of the acceptances of B., and got them discounted, and carried to his account by a banking company to which he was largely indebted at the time, and of which he was a director and local manager, it was held that the bank had notice, and could not be considered *bonâ fide* owners because of their connexion with A.(*b*)

Mutual Credits in Bankruptcy.(*c*)—Where bills are deposited with a banker for a specific purpose he is not entitled to set off a debt due to him from the bankrupt against the trustee claiming the bills.(*d*) But a debt payable *in futuro* may be set off against a debt payable *in presenti.*

The defendants, who were bankers, had, previously to the 24th October, 1842, discounted bills to a large amount for certain customers, who became bankrupts on that day, at which time the defendants had in their hands a balance of 179*l.* 19*s.* 11*d.* belonging to them. The bills were indorsed by the bankrupts in blank, and two of them were paid by the acceptors before the bankruptcy; the others, far exceeding in amount the 179*l.* 19*s.* 11*d.*, did not become due until the 16th November, and on other

(*a*) *Middleton* v. *Barned*, 18 L. J. Ex. 433.

(*b*) *In re Carew*, 31 Beav. 39.

(*c*) The Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), introduced a set-off not only in respect of mutual debts and credits but also in respect of mutual dealings, and this is re-enacted under the Act of 1883 (46 & 47 Vict. c. 52, s. 38). See *Mersey Steel Company* v. *Naylor*, 9 Q. B. D. 648.

(*d*) *Young* v. *Bank of Bengal*, 1 Moore, P. C. 150; see *Buchanan* v. *Findlay*, 9 B. & C. 738; *Naoroji* v. *Chartered Bank of India*, L. R. 3 C. P. 444; *London, Bombay, and Mediterranean Bank* v. *Narraway*, L. R. 15 Eq. 93; *Astley* v. *Gurney*, L. R. 4 C. P. 714; *McKinnon* v. *Armstrong*, 2 App. Cas. 531; *Ex parte Bolland*, 8 Ch. D. 225; *Elliott* v. *Turquand*, 7 App. Cas. 79.

subsequent days. The action, which was for money lent, was commenced on the 2nd November, 1842, and on the 8th of the same month the defendants proved against the bankrupt's estate for the whole of the bills except the two which had been paid, deducting the balance of 179*l.* 19*s.* 11*d.* :—Held, that the defendants, as endorsees of the bill, were entitled to set them off in the action.(*e*)

But in order to constitute a mutual credit or dealing, the claims on each side must be such as result in pecuniary liabilities.(*f*)

A person is not entitled under section 38 of the Bankruptcy Act of 1883, to claim the benefit of any set off against the property of the debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him.(*g*)

Re-discounting.—A customer drew a bill, which was accepted, payable at his bankers'; he discounted it with the bankers, indorsing it to them; they re-discounted and indorsed it to a third person.

On the maturity of the bill it was presented by the holder at the bank, along with other bills payable there, all indorsed by the bankers. All these were paid without any indication whether the bankers paid as indorsers or as agents for the acceptors. The account of the acceptor of this bill was overdrawn at this time, and he stopped payment the same day.

Next day notice of dishonour was given by the bankers to the customer, and he was debited with the amount of it.

It was left to the jury to say whether the bankers paid as indorsers on their own account, or as agents of the acceptor. The jury found that they paid in the former character, which was tantamount to finding that the bill

(*e*) *Alsager* v. *Currie*, 12 M. & W. 751; 13 L. J. Ex. 203.
(*f*) *Rose* v. *Hart*, 8 Taunt. 499; *Eberler Hotel Company* v. *Jonas*, 18 Q. B. D. 459.
(*g*) See further "Robson on Bankruptcy" (7th edit.), p. 364, *et seq.*

was dishonoured, and they had a verdict. The Court held the bankers to have had a right to pay as indorsers, reserving to themselves time to inquire whether they would honour the bill or not, and that there was no obligation on them to inform the holder in what capacity they paid.(*a*)

Accommodation Bills.—Where bankers discount for a customer, the drawer, a bill accepted for his accommodation, which is dishonoured, and after that event, have notice that it was an accommodation bill, and are requested by the customer not to apply to the acceptor, to which they assent, and afterwards the customer's account with them shows a balance in his favour to a larger amount than the bill, the bankers are bound to discharge the bill out of the balance, and cannot keep it as a security for the fluctuating balance which might ultimately become due to them, and, therefore, if they sue the acceptor they will be nonsuited.(*b*)

It makes no difference that after the balance has been in his favour, as above stated, the customer becomes greatly indebted to the bank, and fails before action.(*b*)

Death of Drawee.—Bankers, having discounted for a customer (who did not indorse) a bill drawn by B. on A., another customer, and accepted by him, payable at the bankers' house, on the morning of the day on which it became due, wrote it off in A.'s account to his debit, having at that time in their hands 1,421*l.* to his credit. The bill was for 467*l.* A. was at this time dead, but this was unknown to the bankers at the time they debited A.

(*a*) *Pollard* v. *Ogden*, 2 El. & Bl. 459; see *Attenborough* v. *Mackenzie*, 25 L. J. Ex. 244.

(*b*) *Marsh* v. *Houlditch*, Chitty on "Bills," 283, n. (10th edit.); compare *Hammersley* v. *Knowlys*, 2 Esp. 665. As to what amounts to an accommodation bill, see *In re London, Bombay, &c., Bank*, L. R. 9 Ch. 686; 48 L. J. Bank. 683; *Oriental Financial Corporation* v. *Overend*, L. R. 7 Ch. 142; *Ex parte Swan*, L. R. 6 Eq. 356; Bills of Exchange Act, 1882, s. 28.

The bankers were held to be entitled, when the bill became due, to reimburse themselves out of the acceptor's funds in their hands, having no notice of the death.(c)

Conditional Indorsements.—By section 33 of the Bills of Exchange Act, 1882, where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and the payment to the indorsee is valid, whether the condition has been fulfilled or not.

The law as it stood prior to the Act of 1882 has been altered by this section, it being formerly held that when a bill was conditionally indorsed the acceptor paid it at his peril, if the condition had not been fulfilled.(d)

It has been questioned whether it is allowable by the custom of merchants to indorse a bill of exchange with a condition which restrains the indorsee from indorsing over in a certain event.(e)

Restrictive Indorsements.—An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, "Pay D. only," or "Pay D. for the account of X.," or "Pay D., or order for collection."(f)

The payee or indorsee of a bill of exchange having the absolute ownership in, and the power of disposal over it, has, likewise, the power of limiting its payment to whom he pleases, and of designating the purpose for which such payment shall be applied, and so to restrain its negotiability.(g) Some considerable difficulty frequently arises in deciding what does and what does not amount to a restrictive indorsement. An indorsement to "A.," without mentioning "or order," will not amount to a restrictive indorsement, nor prevent the bill from being

(c) *Rogerson* v. *Ladbroke*, 1 Bing. 93. See Bills of Exchange Act, 1882, s. 75.

(d) *Robertson* v. *Kensington*, 4 Taunt. 30.

(e) *Soares* v. *Glyn*, 8 Q. B. 24 ; 14 L. J. Q. B. 313.

(f) Bills of Exchange Act, 1882, s. 35.

(g) *Edie* v. *East India Company*, 2 Burr. 1227 ; 1 W. Bl. 295.

negotiated, for, the Courts leaning strongly in favour of the negotiability of a bill, nothing short of express words or necessary implication will have that effect.(*a*) Besides the words given by way of example in the Act, "Pay the money to my use," "Pay the contents to my use," "Pay D., or order for my use," are all restrictive indorsements.(*b*)

The words, "the within must be credited to B., value account," have been held to constitute a restrictive indorsement,(*c*) but not the words "Pay D., or order value in account with H. C. D."(*d*)

A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorises him to do so.(*e*)

Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

So, where a bill of exchange was indorsed by the payee generally to A., and by him to B., in these words, "Pay to B. or his order for my use," and B. applied to his bankers to discount the bill, and they, without making any inquiry, did so, and applied the proceeds to the use of B., it was held that the indorsement was restrictive, and that the property in the bill remained in A., and that he was entitled to recover the amount of the bill from the bankers.(*f*)

Capacity of Persons to incur Liability on Bills.—By section 22 of the Act of 1882, the capacity to incur liability

(*a*) *Acheson* v. *Fountain*, 1 Str. Rep. 557; *Edie* v. *East India Company*, *ante*. By section 8 (4) a bill is considered to be payable to order which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferred.

(*b*) See examples given in "Chalmers on Bills," p. 113.

(*c*) *Ancher* v. *Bank of England*, Doug. 637.

(*d*) *Buckley* v. *Jackson*, L. R. 3 Ex. 135.

(*e*) Section 35 (2).

(*f*) *Sigourney* v. *Lloyd*, 8 B. & C. 622.

as a party to a bill is co-extensive with capacity to contract. Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to corporations.

Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.(*g*)

Signature essential to Liability on Bill.—No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such:

Provided that—

Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.(*h*)

The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. (Section 23 of Bills of Exchange Act, 1882.)(*i*)

Indorsement per Procuration.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.(*k*)

Where a person without any authority in that behalf signs a bill in the name of another person, whether simply

(*g*) See 7 & 8 Vict. c. 32, ss. 10, 11, 28; explained by 17 & 18 Vict. c. 83, ss. 11, 12, and *post* (Chap. XXVIII.), as to the right of any banking company or banker, other than the Bank of England, to draw, accept, make or issue in England or Wales, any bill of exchange or promissory note which is either expressed to be, or the legal effect of which is to make it, payable to bearer on demand, or to borrow, owe, or take up any sum of money or such bill or note.

(*h*) *Lindus* v. *Bradwell*, 5 C. & B. p. 591.

(*i*) See *Pooley* v. *Driver*, 5 Ch. D. 458.

(*k*) Section 25. See *In re Land Credit Company*, L. R. 4 Ch. 460; *Stagg* v. *Elliott*, 31 L. J. C. P. 260.

or by a procurative signature, he is not, except in cases falling under section 42 of the Companies Act, 1862, liable on the bill,(*a*) unless the alleged principal is a fictitious or non-existent person.(*b*) He may, however, be sued on an implied warranty that he had the authority to sign he represented himself as having ;(*c*) or, if he knew that he had no authority, an action for false representation will lie against him.

A bill of exchange payable to order and addressed to the B. and I. Company, which was incorporated under local Acts and had no power to accept bills, was accepted by the defendants, who were two of the directors of the company, and also by the secretary, as follows :—" Accepted for and on behalf of the B. and I. Company, G. K., F. S. P. directors ; B. W. secretary." The bill was so accepted and given by the defendants to the drawer, the engineer of the company, on account of the company's debt to him for professional services, and although he was told by the defendants that they gave him the bill on the understanding that he should not negotiate it, but merely as a recognition of the company's debt to him, as the company had no power to accept bills, yet the defendants knew that he would get it discounted, and they meant that he should have the power of doing so. The bill was indorsed by the drawer to the plaintiffs for value, and without notice of the understanding between him and the defendants :— Held, affirming the decision of the Queen's Bench Division, that the defendants were personally liable, as by their acceptance they represented that they had authority to accept on behalf of the company, which being a false representation of a matter of fact and not of law, gave a cause of action to the plaintiffs, who had acted upon it.(*d*)

(*a*) *Polhill* v. *Walter*, 3 B. & Ad. 114 ; section 23 (1).
(*b*) Section 23 (1).
(*c*) *Kelner* v. *Baxter*, L. R. 2 C. P. 174 ; *Polhill* v. *Walter*, *supra* ; *Collen* v. *Wright*, 27 L. J. Q. B. 215. To sign the name of another person to a bill *per proc.*, is made a forgery by 24 & 25 Vict. c. 98, s. 24, if done without authority and with intent to defraud.
(*d*) *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 360.

Where an agent accepts or indorses *per proc.*, the taker of the bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority. Where an agent has such authority his abuse of it does not affect a *bonâ fide* holder for value.(*e*)

Agents.—By section 26 of the Bills of Exchange Act, 1882, it is provided that where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Therefore, such words following a signature, as "executor of B.,"(*f*) "manager (or directors) of the A. company,"(*g*) "agent,"(*h*) will not free the person signing from liability on the bill, for they are merely words of description. "A man," said Lord ELLENBOROUGH, in *Leadbitter* v. *Farrow*,(*i*) "who puts his name to a bill of exchange thereby makes himself personally liable under it, unless he states upon the face of the bill that he subscribes for another, or by procuration of another, which are words of exclusion; unless he says plainly 'I am the mere scribe,' he is liable."

Forged or unauthorised Signature.—By section 24 it is further provided, subject to the provisions of the Act, that where a signature on a bill is forged or placed thereon

(*e*) *Bryant* v. *Powis*, *Bryant* v. *Banque du Peuple*; *Same* v. *Quebec Bank* (1893), A. C. 170.
(*f*) *Liverpool Bank* v. *Walker*, 4 De G. & J. 24.
(*g*) *Courtauld* v. *Sanders*, 16 L. T. (N.S.) 562.
(*h*) See *Wake* v. *Harrop*, 30 L. J. Ex. 273.
(*i*) 5 M. & S., at p. 349.

without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof, against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.(*a*)

Bankers' Commission.—With regard to commission, it seems obvious, and has been expressly laid down, that a banker is as much entitled to his commission for his trouble in transacting money negotiations, as a factor for his trouble in effecting sales; commission is a lawful charge, provided it is reasonable and usual,(*b*) this last fact being a question for the jury.(*c*) Commission may also be charged for the trouble of obtaining the acceptance and payment of bills.(*d*)

Charging commission for collecting bills does not impose upon the bankers a liability to give notice of dishonour in case the bills are not paid on presentment.(*e*)

(*a*) In *The London River Plate Bank* v. *Bank of Liverpool* [1896], 1 Q. B. 7, it was held that when a bill is paid and the money received in good faith, the money so paid cannot be recovered from the holder, if such an interval of time has elapsed that the position of the holder may have been altered, although the indorsements on the bill prove to be forgeries. See section 54 (2); section 55 (2), as to estoppel; and see sections 60, 80, 82, as to protection of bankers paying drafts or collecting crossed cheques. See section 7 (3) as to fictitious payees, and *Clutton* v. *Attenborough* [1895], 2 Q. B. 306; and section 25 in respect of procurative signatures.

(*b*) *Curtis* v. *Livesey*, cited 4 M. & S. 197; *Ex parte Gwyn*, 2 Deac. & C. 12; *Winch* v. *Fenn*, 2 T. R. 52, n.

(*c*) *Masterman* v. *Cowrie*, 3 Camp. 488; *Carstairs* v. *Stein*, 4 M. & S. 192; *Hammett* v. *Yea*, 1 B. & B. 144.

(*d*) *Baynes* v. *Fry*, 15 Ves. 120.

(*e*) In the case of *Ashworth* v. *Miller*, tried before MELLOR, J., and a special jury at Manchester, 22nd March, 1865, it appeared that it was an action brought to recover from the defendant, as the public officer of the Manchester and Liverpool District Bank, the value of a bill of exchange for 272*l.* 9*s.* 6*d.*, which had been handed to them by the plaintiff for collection, and of the dishonour of which they had not given him due

notice, whereby he was unable to recover against his indorsers. It appeared that the plaintiff was a cotton-waste dealer and spinner at Rochdale, and the banking company had a branch bank there with a manager. In September, 1864, the plaintiff took the bill from Fielden and Co., of Rochdale, in discharge of an account for 166*l*., handing them the difference. The plaintiff kept no account with the bank, but had been in the habit for years of handing them cheques for collection, for which the bank charged commission and handed him the proceeds. The bill became due on the 24th of November, 1864, and on the 18th of November the plaintiff left it with the cashier of the bank, who said he would do the business for him. On the 30th of November, the plaintiff called again at the bank, and was then informed that the bill was dishonoured, got the bill back, and paid the bank charges—22*s*. 8*d*. Upon the plaintiff, on the same day, applying to Fielden and Co., they disclaimed all liability on account of the delay, and so did the previous indorsers upon being applied to. The defence on the part of the bank was that they never gave notice of dishonour to casual customers, who were told to call on the day the bill would be returned, and that such was the custom and usage of bankers; and, moreover, that in the present instance the plaintiff had actually been told to call on the 26th of November, and that it was his neglect that he did not call on that day. The plaintiff denied that he had been told to call either on that occasion or on any other. The jury returned a verdict for the defendant, as they were of opinion that the bank had established their case on the ground of general usage among bankers. Mr. Morse, in his "Treatise on Banks and Banking," makes the following pertinent observations on the subject of bankers charging commission for the collection of mercantile paper:—"Sometimes," he says, at p. 323, "banks charge a commission for collection where the business is required to be done in distant places. Sometimes they do it without charge, trusting to the indirect profits and advantages which may be expected to accrue by reason of the chance of the money being left uncalled for during a few days following its actual receipt and their consequent use of it for that time, or from the hope of attracting customers and increasing their business by offering such facilities without extra charges. These motives of self-interest, which must always be supposed to influence the bank, when it consents to collect without direct compensation, are regarded as a sufficient and valuable inducement for the undertaking to collect, and prevent the bank from availing itself of the plea that its contract was without consideration." With respect to the obligation of collection undertaken by bankers, Mr. Morse, in a previous part of his work, p. 322, says:—"Collection upon notes, drafts, bills of exchange, and, in short, upon every species of business paper, is a duty very commonly undertaken by banks on behalf of customers. After the collection is made the bank becomes a simple contract debtor for the amount, less the commission, if any has been charged. If the party for whom the collection was made is a regular depositor, the sum will be properly placed to his credit upon his general deposit account, unless a peculiar usage or special instructions demand some different course of dealing. If the party has no deposit account the bank simply owes him the amount on demand."

CHAPTER XXXV.

BANK OF ENGLAND.

Corporation.—By the National Debt Act, 1870 (33 & 34 Vict. c. 71), s. 72, the Bank of England, which was originally created a corporation by the Crown by virtue of a statute in the year 1694,(*a*) is to continue a corporation until all stock is duly redeemed by Parliament.

Directors.—By 35 & 36 Vict. c. 34, s. 1, section 52 of the 8 & 9 Will. 3, c. 20 (which section relates to elections of directors of the Bank of England), shall have effect as if seven-eighths had been therein mentioned instead of two-thirds.

By section 2, any new or altered bye-law from time to time made by a General Court of the Corporation of the Bank of England for the execution of the Act, not being repugnant to the law of England, shall be effectual without further confirmation or approval.

Deposits and Discounts.—The Bank of England is largely engaged as a bank of deposit and of discount; and in these respects nearly, if not altogether, the same rules apply to its regulations and its relations to customers as have been stated in respect of banking establishments generally. The Bank of England in its trading capacity is in the same position as an ordinary bank. Therefore, where a customer was in the practice of making his acceptances payable at the Bank of England, and, in a particular instance, an acceptance of his was presented at a quarter after nine, and left till eleven o'clock, A.M., and then refused payment for want of assets, and being after-

(*a*) 5 & 6 Will. & My. c. 20, s. 19. Revised Edition of Statutes, 1871.

wards, at six P.M., presented again by a notary, was again refused payment by a person stationed by the bank, although the bank, before six o'clock, had received sufficient assets to cover the bill, it was considered that the bank was not liable at the suit of the acceptor for negligence in dishonouring his bill, because the second presentment took place after banking hours.(*b*)

The Bank of England does not, as a general rule, receive deposits repayable with interest.(*c*)

Branch Banks.—The 7 Geo. 4, c. 46, s. 15, empowers the Bank of England to appoint agents to carry on their business at branch establishments in any place in England. A notice of an act of bankruptcy given to the bank in London, in time for communication to be made to the branch banks, will be sufficient to bind the bank in respect of transactions with the bankrupt at any of those branches.(*d*) But each branch is to be treated as a distinct establishment for the purpose of giving notice of dishonour of a bill of exchange.(*e*)

By the same statute, notes or bank post bills issued at any branch are payable in coin there, as well as in London, but when issued in London, they are not payable at the branch banks.(*d*)

Bank of Issue.—The privileges of the bank, as a bank of issue, will be treated of separately.(*f*)

Proving in Bankruptcy.—The Bank of England being a body politic and corporate,(*g*) may prove in bankruptcy

(*b*) *Whitaker* v. *Bank of England*, 1 C. M. & R. 744.

(*c*) In September, 1864, however, the bank allowed interest at the rate of 5 per cent. on a large sum of money which the Metropolitan Board of Works was bound by Act of Parliament to keep at the bank, as an extraordinary exception to its custom.

(*d*) *Willis* v. *Bank of England*, 4 A. & E. 21.

(*e*) *Brown* v. *London and North-Western Railway Company*, 4 B. & S. 337. See *Prince* v. *Oriental Bank Corporation*, 3 App. Cas. 325; *Woodland* v. *Fear*, 7 E. & B. 519; *Garnett* v. *McKewan*, L. R. 8 Ex. 10.

(*f*) See *post*, Chap. XXXVIII., "Banks of Issue," and Chap. XXXIX., "Bank Notes."

(*g*) 5 & 6 Will. & My. c. 20, s. 20.

by an agent, provided the agent, in his declaration of proof, states that he is authorized under seal to make such proof; and such agent must in his affidavit of proof state his authority and means of knowledge.(*a*) For this purpose, the agent is usually authorized by a power of attorney under the seal of the bank.(*b*)

Agent of the Government.—The Bank of England is the banker or agent of the Government for the management of the National Debt, and the Bank of Ireland acts in a similar capacity in regard to the public debt of Ireland. The unredeemed portion of these debts is represented by stock and terminable annuities, transferable at the Bank of England and at the Bank of Ireland, with interest payable half-yearly.

Stock in the Public Funds.—The existing public stocks are the New Five Pounds per Centum Annuities, New Three Pounds Ten Shillings per Centum Annuities, Two Pounds Ten Shillings per Centum Annuities, and the Two and Three Quarters per Cent. Consolidated Stock,(*c*) which form part of the permanent, funded, consolidated, or National Debt of the United Kingdom of England, and are transferable at the Banks of England and of Ireland. The nature of stock and money in the Public Funds is this: stock is a chose in action; it has no locality, except for the purposes of probate and administration; it does not fall under the head of goods and chattels, so as to pass by a grant of *bona et catalla felonum*;(*d*) it has been said neither to be a chattel, nor to have any

(*a*) The Bankruptcy Act, 1883, s. 148; see also Schedule 2, par. 3, Form 72.

(*b*) *Ex parte Bank of England*, 1 Swanst. 19; *Naylor* v. *Mortimore*, 10 Jur. (N.S.) 1001, 1003.

(*c*) This stock was created by the National Debt (Conversion) Act, 1888 (51 & 52 Vict. c. 2), by which Act the 3 per cent. Consols, "3 per cent. reduced," and New 3 per cents were converted into the new stock or paid off. The Act provides that after the 5th April, 1903, the stock shall be called $2\frac{1}{2}$ per cent. consolidated stock; section 2 (4).

(*d*) *Rex* v. *Capper*, 5 Price, 217.

resemblance to a personal chattel ;(e) nor can it be sued for as money.(f)

Stock Certificates.—The National Debt Act, 1870, s. 26, enables the holders of public stocks in England and Ireland to convert their stock into certificates to bearer, having coupons attached for the payment of the dividends ; and the 26 & 27 Vict. c. 73, s. 3, is a similar enactment in favour of holders of India stock.

India Stock.—By the Trustee Act, 1893, trustees may invest trust moneys in India 3½ per cent. stock(g) and in India 3 per cent. stock,(h) or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament and charged on the revenues of India, unless expressly forbidden by the instrument creating the trust.(i)

By 23 Vict. c. 5, s. 2, transfers of the Indian government loans registered in the books of the Indian Office in London, or in the Bank of England, are exempt from stamp duty.

Indian government notes, or the certificates or stock issued in lieu thereof, registered in the books of the bank or of the India office in London for the payment of interest, are to be deemed personal estate of a person dying in England, for the purpose of probate duty.(k)

Contracts for the Sale of Stock.—A contract for the sale of stock differs from a contract for the sale of a specific chattel, inasmuch as stock is, as has been before stated,

(e) *Wildman* v. *Wildman*, 9 Ves. 174.
(f) *Nightingall* v. *Devisme*, 2 W. Bl. 684.
(g) This stock now represents the old stock of the East India Company (redeemed by 36 & 37 Vict. c. 17) and the 5 per cent. stock created under 22 & 23 Vict. c. 39 and subsequent Acts which, after being converted into 4 per cent. stock, became redeemable in 1888.
(h) This stock was created in 1884 and is not redeemable until October, 1948.
(i) 56 & 57 Vict. c. 53, s. 1 (d).
(k) 23 Vict. c. 5, s. 1.

distinguishable from a chattel, and therefore, a contract for the sale of stock is satisfied by the delivery of any stock of the description bargained for; consequently, what is usually called a contract for sale in such a case, does not mean an actual sale, but only a contract to deliver, and such contract is not a contract for the sale of "goods, wares or merchandise," within the 17th section of the Statute of Frauds (now section 4 (1) of the Sale of Goods Act, 1893),(*a*) so as to require a memorandum in writing.(*a*) The contract requires to be stamped.(*b*)

Transfer of Stock.—By the National Debt Act, 1870, s. 22, in the offices of the respective accountants-general of the Banks of England and Ireland books shall be kept wherein all transfers of stock shall be entered. Every such entry shall be conceived in proper words for the purpose of transfer, and signed by the party making the transfer, or, if he is absent, by his attorney thereunto lawfully authorized by writing under his hand and seal, and attested by two or more credible witnesses. The person to whom a transfer is so made may, if he thinks fit, underwrite his acceptance thereof. And no other mode of transferring

(*a*) 56 & 57 Vict. c. 71; *Heseltine* v. *Siggers*, 1 Exch. 856.

(*b*) By the Stamp Act, 1891 (54 & 55 Vict. c. 39), for the purposes of the Act a "Contract Note," means the note sent by a broker or agent to his principal (except where such principal is acting as broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security. A contract note for or relating to the sale or purchase of stock or marketable security of the value of 5*l*., and under 100*l*., requires a stamp of one penny, which by section 52 (3) *may* be denoted by an adhesive stamp.

By the Customs and Inland Revenue Act, 1893 (56 & 57 Vict. c. 7), a contract note where the value of the stock, &c., is 100*l*. or upwards, requires a stamp of one shilling, which *must* be adhesive. Every adhesive stamp on a contract note is to be cancelled by the person by whom the note is executed: see Stamp Act, 1891, s. 52 (4).

By section 53 (2) of the Stamp Act, 1891, every person who makes or executes any contract note chargeable with duty, and not being duly stamped, shall incur a fine of 20*l*.

By section 53 (3), no broker, agent or other person shall have any legal claim to any charge for brokerage, commission, or agency, with reference to the sale or purchase of any stock or marketable security of the value of 5*l*. or upwards mentioned or referred to in any contract note, unless such note is duly stamped. But it would seem a broker does not lose his commission by failing to send a stamped contract to his principal. *Learoyd* v. *Bracken* (1894), 1 Q. B. 114.

stock shall be good in law, except where otherwise provided by Act of Parliament. By section 24, the Banks of England and Ireland before allowing any transfer of stock may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to make the transfer. That evidence shall be the declaration of competent persons made under the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), or of such other nature as the banks require. The bank, however, is not bound to accept as sufficient evidence of the death of a stockholder on a joint account in its books such proof as would satisfy the Court of Chancery.(*c*) The stock vests, by the transfer, without acceptance.(*d*)

Where a statute declared the stock created under it to be transferable as the Act directed, and not otherwise, and enacted, that the entries of transfer should be signed by the parties making such transfers, and that any person to whom such transfer should be made should underwrite his acceptance thereof, and that no other method of transferring such stock should be valid; and a person alleging himself to be a holder of stock brought an action against the Bank of England for not paying dividends, it was held that he could not dispute the title of the transferee, on the ground that such transferee had not underwritten his acceptance, the claimant of the dividends having himself executed the transfer in the prescribed mode, and pocketed the price of the stock.(*e*)

If the Bank of England make an unreasonable delay in passing a power of attorney for the transfer of stock, they are liable in damages for any loss sustained in consequence; but they are to have time to take all reasonable means for clearing up any doubt as to the authenticity of the power of attorney, which they may reasonably entertain.(*f*)

(*c*) *Prosser* v. *Bank of England*, 41 L. J. Ch. 327.
(*d*) *Rex* v. *Gade*, 2 Leach, C. C. 732.
(*e*) *Foster* v. *Bank of England*, 8 Q. B. 689.
(*f*) *Sutton* v. *Bank of England*, 1 C. & P. 193; R. & M. 52.

This being the case, it follows,—and it follows *à fortori* —that they are responsible in an action if they refuse to transfer, and a *mandamus* does not therefore go to compel them to transfer.(*a*)

Where a lunatic is donee of a power of appointing new trustees of a settlement, the Judge has jurisdiction under sections 128 and 129 of the Lunacy Act, 1890,(*b*) to authorize the committee of the lunatic to exercise the power on his behalf by appointing persons named in the order to be new trustees of the settlement; and where the settlement comprises bank annuities, the order of the Judge may properly go on to authorize the persons so named, upon their appointment as trustees, to call for a transfer of the bank annuities into their own names, to receive the dividends until transfer, and to hold the stock when transferred upon the trusts of the settlement. The bank are not entitled to require the Court to give them a "clear order," but must act upon the order of the Court in the form it is made, but they may be entitled to a certificate of the master in lunacy or some other evidence that the deed upon which they are called upon to act is properly executed.(*c*)

The transfer of stock standing in the name of any local authority is now regulated by the Local Government (Stock Transfer) Act, 1895, to which the reader is referred.(*d*)

Transfer by Executors or Administrators.—By the National Debt Act, 1870,(*e*) s. 23, the interest of a stock-holder dying in stock shall be transferable by his executors or administrators, notwithstanding any specific bequest. The Bank of England or of Ireland shall not be required to allow any executors or administrators to transfer any stock until the probate of the will of, or the letters of

(*a*) *Rex* v. *Bank of England*, 2 Dougl. 524; Com. Dig. Action on the Case, A. 4.

(*b*) 53 & 54 Vict. c. 5.

(*c*) *In re Shortridge* (1895), 1 Ch. 278.

(*d*) 58 & 59 Vict. c. 32

(*e*) 33 & 34 Vict. c. 71

administration to, the deceased has or have been left with the bank for registration, and may require all the executors who have proved the will to join in the transfer. Although there is a specific bequest, the bank is bound to permit the executor to transfer unless it can be shown that he has assented to the legacy.(*f*)

By Joint Proprietors and by Survivors.—A joint tenant of stock cannot legally transfer his share; for virtually, at least in the case of two joint tenants, that would amount to the power of transferring the whole.(*g*)

Stock standing in the names of two persons jointly, on the death of one becomes, at law, the absolute property of the survivor, and therefore the administrator of the deceased cannot maintain against the survivor an action to recover the deceased's share, although, if there is a trust in favour of a third person, the survivor may be responsible in a Court of Equity for the disposition of the property according to the trust.(*h*)

When stock has been purchased in the joint names of two persons, out of money standing to their joint account in the bank, it is not necessarily to be considered as held in joint tenancy, but the origin of the money and the acts and intentions of the parties may be looked to, and a conclusion in favour of a tenancy in common drawn from these circumstances.(*i*) Two sisters, being tenants in common of estates, had money arising from the rents standing to their joint account in the bank. Part of the money was from time to time invested in the purchase of stock in their joint names, and part on mortgage, the mortgaged premises being conveyed to them as tenants in common. Each sister, by her will, affected to dispose of her share

(*f*) *Franklin* v. *Bank of England*, 9 B. & C. 156.

(*g*) *Sloman* v. *Bank of England*, 14 Sim. 488. See further as to the right of survivorship, *In re Eykyn*, 6 Ch. D. 115; *Tonbridge* v. *Cord*, 25 L. T. 150; *Batstone* v. *Salter*, L. R. 10 Ch. 431.

(*h*) *Crossfield* v. *Such*, 8 Exch. 825; 22 L. J. Exch. 325.

(*i*) *Robinson* v. *Preston*, 27 L. J. Ch. 395; 4 Kay & J. 505. See *Morley* v. *Bird*, 3 Ves. 631; *Lake* v. *Gibson*, 1 W. & T. L. C. 198.

of the stock; it was held, that they were entitled to the stock as tenants in common and not as joint tenants.(*a*) But where two sisters carried on business as farmers, and had a joint account at their bankers, and an establishment and purse in common, and invested part of their money in the purchase of consols, in their joint names, and had a balance due to them on their banking account, besides a sum due to them from their bankers on deposit notes, on the death of one, the two sisters were considered to be joint tenants of the consols, and tenants in common of the balance and of the deposit notes.(*b*)

Two sisters, spinsters, executrixes and beneficiaries under their father's will, transferred a portion of the fund bequeathed to them as tenants in common into their joint names, and afterwards out of the proceeds of that of which they were tenants in common purchased stock in their joint names. They lived together, had all things in common, and made mutual wills in each other's favour:—Held, first that the transfer made them joint tenants of the fund transferred, and secondly, that they were joint tenants of the stock afterwards purchased out of the proceeds of a fund of which they were tenants in common.(*c*)

Powers of Attorney.—A power of attorney, to transfer stock, is revocable by a stockholder, acting personally for himself, without deed.(*d*) So is a power to receive dividends.(*e*) Stock may be legally transferred under a power of attorney after the death of the grantor, if without notice of his death.(*f*) So after the revocation of the power, if before notice of the revocation.(*g*) By section 4 of the National Debt Act, 1889,(*h*) where two or more

(*a*) *Robinson* v. *Preston*, 27 L. J. Ch. 395; 4 K. & J. 505.
(*b*) *Bone* v. *Pollard*, 24 Beav. 283.
(*c*) *In re Hughes*, 24 L. T. 415.
(*d*) *Rex* v. *Wait*, 11 Price, 518; 7 Moore, 473.
(*e*) *Clark* v. *Laurie*, 26 L. J. Exch. 36.
(*f*) *Kiddill* v. *Farnell*, 3 Sm. & G. 428; 26 L. J. Ch. 818.
(*g*) "Story on Agency," s. 470, 5th edit.
(*h*) 52 & 53 Vict. c. 6.

persons have given a letter or power of attorney for the receipt of dividends on stock, and one of them becomes of unsound mind the letter or power shall not thereby be made void. Powers of attorney for the transfer of stock, or for the receipt of dividends, are subject to certain stamp duties.(*i*)

Transfer of Stock under Forged Powers of Attorney.—A forged power of attorney has no effect to transfer stock standing in the name of A. to the name of B.; consequently, if the bank transfers A.'s stock under a forged power of attorney, the bank will be liable to replace A.'s stock.(*k*) A. may recover damages against the bank for not making a transfer from A. to a purchaser of such stock.(*k*)

(*i*) The stamp duties on letters or powers of attorney are regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39), as amended by section 11 of the Finance Act, 1895 (58 & 59 Vict. c. 16). They are as follows:—

	£	*s.*	*d.*
For the receipt of the dividends or interest of any stock:			
Where made for the receipt of one payment only...	0	1	0
In any other case	0	5	0
For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding 20*l.*, or any periodical payments not exceeding the annual sum of 10*l.* (*not being hereinbefore charged*)	0	5	0
For the sale, transfer or acceptance of any of the government or parliamentary stocks or funds:			
Where the value of such stocks or funds does not exceed 100*l.*	0	2	6
In any other case	0	10	0
Of any kind whatsoever not hereinbefore described ...	0	10	0

A letter or power of attorney for the receipt of dividends of any definite and certain share of the government or parliamentary stocks or funds producing a yearly dividend of less than 3*l.*, and an order, request, or direction under hand only from the proprietor of any stock to any company or to any banker to pay the dividends or interest arising from the stock to any person therein named are exempted.

By section 81, a letter or power of attorney for the sale, transfer, or acceptance of any of the government or parliamentary stocks or funds, duly stamped for that purpose, is not to be charged with any further duty by reason of containing an authority for the receipt of the dividends on the same stocks or funds.

(*k*) *Davis* v. *Bank of England*, 2 Bing. 393.

It would, however, seem that where the bank has transferred stock under a forged power of attorney, they are not liable if they can show on the part of the stockholder such negligence as to estop him from disputing the transfer or such subsequent conduct as to amount to a ratification.(*a*)

If one of two trustees of stock forges the signature of his co-trustee to a power of attorney, and under it sells out stock and absconds, the bank is compellable, in a Court of Equity, to reinvest the stock in the name of the other trustee.(*b*)

It is the duty of the bank to prevent the entry of a transfer in their books until satisfied that the person who claims to be allowed to make it is duly authorised so to do. Were the law otherwise, the whole property of every stockholder would be at the mercy of the bank clerks.

It is felony to forge any power of attorney for the transfer of any stock at the Bank of England or of Ireland,(*c*) or to forge any name, handwriting or signature, purporting to be the name, handwriting or signature of a witness attesting the execution of such power of attorney.(*d*)

Transfer into Fictitious Names.—If a bankrupt for the purpose of defrauding his creditors, purchases stock, of which he obtains the transfer into a fictitious name, a Court of Equity will afford relief *to the creditors*, by ordering the Bank of England to erase the fictitious name, and insert that of the bankrupt as the transferee.(*e*)

Forging Transfers.—It is felony to forge the transfer of

(*a*) *Bank of Ireland* v. *Evans' Charities*, 5 H. L. Cas. 389; *Merchants of the Staple* v. *Bank of England*, 21 Q. B. D. 160.

(*b*) *Sloman* v. *Bank of England*, 14 Sim. 475; *Midland Railway Company* v. *Taylor*, 8 Jur. (N.S.) 419, H. L.

(*c*) 24 & 25 Vict. c. 98, s. 2.

(*d*) *Ibid.* s. 4.

(*e*) *Green* v. *Bank of England*, 3 Y. & C. 722; see 46 & 47 Vict. c. 52, s. 50.

any share or interest of or in any stock transferable at the Bank of England or at the Bank of Ireland.(*f*)

Personating Stockholders.—The personating of an owner of stock in the funds, or of the dividends, and thereby endeavouring to transfer the stock or receive the dividends, is felony.(*g*)

Mortgage of Stock.—A mortgagee who has advanced on the security of stock for a fixed period is bound, in the absence of express stipulation to the contrary, to return the identical stock pledged at the expiration of the loan, and for this purpose stock is as capable of identification as any other security. If he sell the stock in pledge during the currency of the loan, he is accountable to the mortgagor for any profit made by the sale.(*h*) Acting by analogy to cases where delivery of possession of real estate had been ordered with the order for foreclosure absolute, though the order *nisi* did not provide for such delivery, and there had been no claim for delivery, the Court ordered a transfer of consols, although the transfer had not been claimed or provided for by the order *nisi*.(*i*)

Bank Books.—Making false entries or altering any words or figures in the books of the Bank of England or of Ireland, in which the accounts of the owners of stock are kept, with intent to defraud, is felony.(*k*)

Inspection of Books.—The books of the Bank of England cannot be inspected by persons who have no interest in them, or who seek an inspection for purposes of a private nature, unconnected with the objects for which the books are kept.

A fund-holder has a right to inspect and copy entries relating to the stock and its transfers in which he is interested; but he has only the right as to the particular

(*f*) 24 & 25 Vict. c. 98, s. 2.
(*g*) *Ibid.* s. 3.
(*h*) *Langton* v. *Waite*, 37 L. J. Ch. 345; L. R. 4 Ch. 402.
(*i*) *Ricketts* v. *Ricketts* [1891], W. N. 29.
(*k*) 24 & 25 Vict. c. 98, s. 5.

entries relating to the particular parcel of stock, and no other;(a) and the bank is accordingly liable to furnish a list of such of their books as contain entries of stock in which the party applying is interested, and the Courts of Equity enforce this obligation.(b)

The bank books are, in general, not removable, on the ground of public inconvenience,(c) and they are provable, by examined copies made under the provisions of the Bankers' Books Evidence Act, 1879.(d)

The bank books are the best evidence of the transfer of stock, but still it is not always necessary that they should be produced to afford this proof; the signature of the alleged transferee may be proved by a person who knew the party's handwriting, and had inspected the signature of acceptance in the books.(e)

Trusts.—The Bank of England does not take notice of trusts; they are not to look beyond the legal title; therefore they cannot prevent an executor selling out or transferring stock into his own name,(f) and are not chargeable, if he transfers the stock to persons not entitled under the will.(g) There is a case decided in relation to this point a good many years ago, in which the facts were as follows:—

A transfer was made of stock at the bank in the name of a wife by her husband, which stock, it was suspected, she held by virtue of a trust to her separate use. A memorandum was made by the bank on the transfer, indicating that a flaw was suspected in the title. This, it was held,

(a) *Foster* v. *Bank of England*, 8 Q. B. 689.
(b) *Heslop* v. *Bank of England*, 6 Sim. 192.
(c) *Mortimer* v. *M'Callan*, 6 M. & W. 58, 67, 69; *Rex* v. *Gordon*, Dougl. 572 n; *Davis* v. *Bank of England*. 2 Bing. 404.
(d) See Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), printed in Appendix. The effect of section 3 of the Act is to make copies of entries in the books of a banker evidence against any one. *Harding* v. *Williams*, 14 Ch. D. 197; *Howard* v. *Beall*, 23 Q. B. D. 1. See *ante*, Chap. XXXII.
(e) *Mortimer* v. *M'Callan*, 6 M. & W. 58.
(f) *Bank of England* v. *Parsons*, 5 Ves, 665.
(g) *Hartga* v. *Bank of England*, 3 Ves. 55.

must not be allowed; it was further held, that no secret trust, as against the party having an open legal title, will affect the bank.

Lord MANSFIELD added: "I won't say a word against the holder of the stock having his action against the bank, for disparaging his title."(*h*)

The fact is, if the bank looked beyond the legal title, for instance, if they took notice of the trusts of a will, they must be held to take notice throughout, and therefore they would have to stand the consequences of resulting trusts, and such trusts as would be raised by a Court of Equity:(*i*) in fact, if so, they would be charged with all the trusts in the kingdom.(*k*)

In reality, there is nothing in the statutes relating to the establishment or regulation of the bank, which makes them trustees of the public funds for any person; if they voluntarily enter in their books a trustee's account, they may, under certain circumstances, become liable for the performance of the trusts; they stand much in the same relation to stock that a bailee of goods does to the goods; if they have distinct notice that the person in whose name the stock stands is not the real owner, or holds subject to a claim, and they, nevertheless, allow the transfer to be made, then they may be, but then only, responsible for the transfer.(*l*)

It is common, in order to avoid the frequent recurrence of the necessity of appointing fresh trustees—at least, it is not uncommon when the stock is considerable—to appoint, in the first instance, four trustees; for then, on the decease of one, or even of a second, of the trustees, there still remains the check which one mind may be supposed to have over a tendency to dishonesty in the other.

In general, it is a rule with the Bank of England not to

(*h*) *Lady Mayo's Case*, Lofft. 65.
(*i*) *Bank of England* v. *Parsons*, 5 Ves. 669.
(*k*) See *Hartga* v. *Bank of England*, *ante*.
(*l*) *Humberstone* v. *Chase*, 2 Y. & C. 209.

allow a fund to be transferred into the names of *more* than four joint owners.

As before stated, by section 24 of the National Debt Act, 1870,(*a*) the Banks of England and Ireland respectively, before allowing any transfer of stock, may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to make the transfer.

The Bank of England is not bound to accept as sufficient evidence of the death of a stockholder on a joint account in its books such proof as would satisfy the Court of Chancery.(*b*)

Distringas upon.—A claimant to an interest in stock transferable at the Bank of England, standing in the name or names of any person or persons, or body politic or corporate, in the bank books, who was desirous of restraining the transfer of such stock, or the payment of the dividends thereof, formerly issued a *distringas*, prepared by his solicitor, and sealed by the clerk of records and writs, in the form prescribed by the 5 Vict. c. 5, s. 5.(*c*) The writ was then served on the Bank of England, together with a notice not to permit the transfer, or not to pay the dividends, as the case might be.

Now, however, by the Rules of the Supreme Court, 1883, it is provided that no *distringas* shall thenceforth be issued under the above Act, and in place thereof it is enacted:(*d*)—

Filing and service of affidavit and notice

By Rule 4 of Order 46, any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or his solicitor in the Form No. 27 in Appendix B., with

(*a*) 33 & 34 Vict. c. 71.

(*b*) *Prosser* v. *Bank of England*, 41 L. J. Ch. 327; 26 L. T. 60.

(*c*) Form of Affidavit, Order XXVII., General Orders, H. T. 1860; 29 L. J. Ch. 26. See *In re Marquis of Hertford*, 1 Hare, 584; *Watts* v. *Watts*, 40 L. J. Ch. 388.

(*d*) Order XLVI., r. 3. In these rules the expression "company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, and the expression "stock" includes shares, securities, and dividends thereon. The words "dividends thereon" were substituted for the word "money" by the Rules of 1888.

such variations as circumstances may require, and on filing the same in the Central Office with a notice in the Form No. 22 in the same Appendix, with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the company. as to stock. Order XLVI., r. 4.

By Rule 5, there shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent. Affidavit state address of claimant. Order XLVI., r. 5.

By Rule 6, all such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as thereinafter mentioned, whether the person to whom the notice is sent is living or not. Service of notice. Order XLVI., r. 6.

By Rule 7, the address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed; but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this order. Alteration of address. Order XLVI., r. 7.

By Rule 8, the service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the company as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England if these rules had not been made. Effect of service of affidavit and filed notice. Order LXVI., r. 8.

By Rule 9, a notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice or by petition, or by summons at chambers, duly served by any other person claiming to be interested in the stock sought to be affected by the notice. With-drawal or discharge of notice. Order XLVI., r. 9.

By Rule 10, if, whilst a notice filed under Rule 4 of this Order continues in force, the company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the company shall not, by force or in consequence of the service of the notice, be authorised, without the order of the court or a judge, refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.(e) Effect of request for transfer of stock or payment of dividend. Order XLVI., r. 10.

(e) See *Re Blaksley*, 23 Ch. D. 549.

Amendment of description of stock. Order XLVI., r. 11.

By Rule 11, if the person who files a notice under Rule 4 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

Renewal of notice as to stock. Order XLVI., r. 14.

By Rule 14,(*a*) any person who, under Order XLVI. of the Rules of the Supreme Court, 1880, may have served in the manner thereby prescribed a notice, operating in lieu of a writ of *distringas*, which at the time of making this present rule may be still in force, may, at any time during the currency thereof, file in the Central Office, without any affidavit in support thereof, a further notice under his hand, stating that the same shall thenceforth have effect without any further renewal, in the same manner as if it had been a notice filed in the Central Office on affidavit under Order XLVI., rr. 4, 5, of the Rules of the Supreme Court, 1883, and serve a duplicate of such notice under the seal of the Central Office upon the company upon which such first-mentioned notice was served; and the service of the duplicate of such notice so filed shall have the same effect as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England.

This Rule is dated 27th July, 1885, and is intended to keep alive a notice given between the 6th April, 1880 (the date of the former corresponding rules), and the 24th October, 1883 (the date of the new Rules) without filing a fresh affidavit. See Rule 4, *supra*.

Charging Order.—The chief difference between a "charging order" and a writ of *distringas* is that the former is an order made on the application of a judgment creditor, that the stock, &c., or other funds, the subject of the order, shall stand charged with the payment of the judgment debt, and entitles the judgment creditor to all such remedies as he would have been entitled to if such charge had been made(*b*) in his favour by the judgment debtor; whereas the writ of *distringas*, or rather the notice in lieu of it as provided by the above rules does not apply as between judgment creditor and debtor, but is the proceeding used by any person other than a judgment creditor for preventing the transfer of stock to which he claims to be

(*a*) Rules 12 and 13 apply only to stop orders or funds in Court, and are, therefore, omitted from the text.

(*b*) See *Re Leavesley* [1891], 2 Ch. 1.

entitled. The judgment creditor cannot, however, take proceedings to have the benefit of his charge until after the expiration of six months from the date of the order.

Stop Orders. — A stop order is an order having the same effect as a writ of *distringas*. It is used to prevent a transfer of stock standing in the Court of Chancery, and may be obtained by a judgment creditor or any other person having a claim on the stock. It may be made in respect of stock not actually paid into Court if an order has been made that it shall be paid in.(c)

Dividends.—By the National Debt Act, 1870,(d) s. 25, the Banks of England and Ireland may close their books for the transfer of stock on any day in the month next preceding that in which the dividends on that stock are payable, but so that the books be not at any time so closed for more than fifteen days. The persons who on the day of such closing are inscribed as stockholders shall, as between them and their transferees of stock, be entitled to the then current half-year's dividend thereon.

By section 18, the Banks of England and Ireland before allowing the receipt of any dividend on any stock may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to receive the dividend. That evidence shall be the declaration of competent persons under the Statutory Declarations Act, 1835,(e) or of such other nature as the banks require.

By section 19, the banks are also authorised to pay the dividends under the power of attorney of one joint owner, where the other is either an infant or a person of unsound mind.

Action to recover.—In an action, however, against the bank for the non-payment of dividends, the plaintiff must allege and prove that the money to discharge the divi-

(c) *Shaw* v. *Hudson*, 48 L. J. Ch. 689.
(d) 33 & 34 Vict. c. 71.
(e) 5 & 6 Will. 4, c. 62, ss. 2—5.

dends has been received by the bank from the government, for the bank have no more than the care of the stock; and it must be shown that they have funds, before they can be proved to have committed a breach of duty in not paying them over to the plaintiff.(*a*)

Forging Powers of Attorney to receive.—Forging a power of attorney for the receipt of any dividend is a felony.(*b*)

Transmission of Warrants by Post.—By the National Debt Act, 1889,(*c*) s. 4, the Banks of England and Ireland may, from time to time, with the concurrence of the Treasury, make regulations for the payment of dividends on stock by sending the warrants through the post,(*d*) or by payment through a banker, or by payment at a country branch; and where a dividend warrant is sent by post in accordance with any such regulations, the posting of the letter containing the warrant, addressed in the manner prescribed by the regulations, shall, as respects the liability of the bank, be equivalent to the delivery of the warrant to the stockholder.

Where two or more persons are registered as joint holders of stock, anyone of those persons may give an effectual receipt for any dividend on the stock, unless notice to the contrary has been given to the bank by any of the other holders.

Making out False Dividend Warrants.—It is felony for any clerk, officer, or servant of the Bank of England or of Ireland, to make out or deliver any dividend warrant for a greater or less amount than the person on whose behalf the warrant is made out is entitled to, with intent to defraud.(*e*)

(*a*) *Bank of England* v. *Davis*, 5 B. & C. 185.
(*b*) 24 & 25 Vict. c. 98, s. 4.
(*c*) 52 & 53 Vict. c. 6.
(*d*) So by 36 & 37 Vict. c. 44, where Government annuities for life or years are payable by the Commissioners for the Reduction of the National Debt, the warrants may be sent by post at the request of the annuitants.
(*e*) 24 & 25 Vict. c. 98, s. 6.

Unclaimed Dividends.—By the National Debt Act, 1870,(*f*) s. 51, all stock, no dividend whereon is claimed for ten years before the last day on which a dividend thereon becomes payable (except where payment of dividend has been restrained by a Court of Equity), shall be transferred in the books of the Bank of England or of Ireland (as the case may be) to the National Debt Commissioners. By section 55, the governor, or deputy governor of the Bank of England or of Ireland, may direct the accountant-general or deputy accountant-general or secretary or deputy or assistant secretary of the bank to re-transfer any stock transferred to any person showing his right thereto to the satisfaction of the governor or deputy governor, and to pay the dividends due thereon, as if the same had not been transferred or paid to the National Debt Commissioners. But in case the governor or deputy governor is not satisfied of the right of any person claiming to be entitled to any such stock or dividends, the claimant may, by petition in a summary way, state and verify his claim to the Court of Chancery.

Under this statute it is not necessary for the claimant to show himself to be beneficially interested in the stock; to prove a legal claim to it is sufficient.(*g*) But then it is not a matter of course, where there is anything to indicate the party not to be beneficially entitled, to order a re-transfer upon the claimant making out a legal title, such as a transfer would have been made to him upon, if the ten years had not elapsed; thus, if stock stands in the names of two persons, one of whom survives the other upwards of ten years, but has not, during that time, claimed any dividends, the Court refuses, upon petition of the survivor's widow and personal representative, to order the stock to be re-transferred into her name, or into the names of the two deceased persons, but directs a reference to

(*f*) 33 & 34 Vict. c. 71. This Act repeals the 56 Geo. 3, c. 60, the former statute on this subject.
(*g*) *In re Bigg*, 1 Y. & C. 245.

inquire who is entitled to the stock, with liberty to state special circumstances.(*a*)

A legacy to an infant was invested in stock in the names of two executors, and the dividends not having been claimed for ten years, the stock was transferred to the Commissioners for the Reduction of the National Debt. One of the executors having died, the survivor presented a petition for the re-transfer of the stock. The Court without requiring the concurrence of the beneficiaries made an order directing the stock to be transferred to him, and that he should thereout pay the costs of the Attorney-General and the Commissioners.(*b*) When stock has been transferred to the Commissioners by reason of no application for dividends having been made, a re-transfer cannot be obtained, nor can enquiries be directed as to the beneficial title to the stock in the absence of a legal representative of the person in whose name the stock stood at the date of the transfer; and a claimant establishing his right to the re-transfer of stock is only entitled to the re-transfer and the payment of dividends, but not to the invested accumulations of such dividends.(*c*)

Bank Stock.—Before the 22 & 23 Vict. c. 35, s. 32, an investment by trustees of trust moneys in Bank of England stock, though it was practically as safe as the Government funds, was not regarded by the Courts of Equity as a proper investment of trust moneys, and, upon knowledge of the fact that such an investment had been made, they would have ordered the stock to be sold out, and the proceeds invested in consols. If any loss was occasioned to the trust estate by fluctuation in the prices of the bank stock, or of the government stock, between the dates when the investment was made, and the re-investing in consols,

(*a*) *Ex parte Ram*, 3 My. & C. 25; *In re Bishton*, 27 L. J. Ch. 168; *Hunt* v. *Peacock*, 6 Hare, 361. As to the right of the bank to refuse inspection of the list of unclaimed stock and dividends under section 52 to a person who cannot show a *bonâ fide* claim, see *Reg.* v *Bank of England* [1891], 1 Q. B. 785.

(*b*) *In re Ackland*, 26 L. T. 418.

(*c*) *In re Ashmead*, L. R. 8 Ch. 113; 42 L. J. Ch. 314.

the trustee had to make good the difference.(*d*) But under that Act and now under the Trustee Act, 1893,(*e*) a trustee,(*f*) unless he is expressly forbidden by the instrument creating his trust, may invest any trust fund in the stock of the Bank of England or of Ireland, whether at the time in a state of investment or not.(*g*) Upon a loss sustained by a depreciation in the price of consols, a trustee upon a proper investment will not be liable for the difference.(*h*) A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment authorised by the instrument of trust, or by the general law.(*i*)

Bonuses.—An extraordinary division of a sum of money among the proprietors of bank stock, beyond the ordinary dividend, by way of bonus, is considered as an accretion to the capital; therefore, a tenant for life of the bank stock, in respect of which the division is made, is not entitled to the bonus, but only to the dividends upon it considered as capital, as they accrued during his life ;(*k*) it makes no difference that the division was in money, and not in stock ; that did not cause it to be considered as a profit arising and payable in the time of the tenant for life, and to which, therefore, he was entitled, inasmuch as all the profits, ordinary and extraordinary, arose in the same way.(*k*) But where a bonus, dividend, or share

(*d*) *Hancon* v. *Allen*, 2 Dick. 498 ; *Clough* v. *Bond*, 3 M. & C. 496.

(*e*) 56 & 57 Vict. c. 53.

(*f*) For definition of "trustee," see section 50 of Trustee Act of 1893. It is submitted that the powers of trustees would be vested in the legal personal representatives of a deceased testator should they have any trust to perform by nature of their office, but not otherwise. On this point the reader is referred to *Re Moore*, 21 Ch. D. 778 ; *Re Willey* (1890), W. N. 1 ; *Eaton* v. *Daines* (1894), W. N. 32. The court has no power to appoint an executor or administrator (56 & 57 Vict. c. 53, s. 25 (3)).

(*g*) 56 & 57 Vict. c. 53, s. 1 (*c*).

(*h*) *Peat* v. *Crane*, 2 Dick. 499, n.

(*i*) See *In re Medland*, 41 Ch. D. 476 ; 57 & 58 Vict. c. 10, s. 4.

(*k*) *Bouch* v. *Sproule*, 12 App. Cas. 385 ; *Brander* v. *Brander*, 4 Ves. 802 ; 14 Ves. 70, 78 ; 13 Price 774 ; *Paris* v. *Paris*, 10 Ves. 185 ; *Clayton* v. *Gresham*, 10 Ves. 290 ; *Witt* v. *Steere*, 13 Ves. 363. See *Re Hopkins' Trust*, 22 W. R. 687.

settled by will was paid out of the accumulation of the reserve fund, it was declared to be income and to belong to the tenant for life.(*a*)

Stock stood in the name of trustees under a marriage settlement, to pay the dividends with any bonuses that might from time to time be allowed, and when the same should be payable, to a husband and his wife and the survivor for life: it was held, that the husband was absolutely entitled to a bonus declared during his life estate.(*b*) He did not take the bonus, but allowed it to be added to the capital and received the dividends on the whole. On his death, the wife as survivor was entitled to receive the bonus.(*c*)

Bequests.—A bequest of "money" will not pass stock(*d*) but a bequest of "securities for money" will, unless the expression is controlled by the context. However, stock in the funds has been said to pass, or not, under the words "moneys" or "goods" or "chattels," according to the whole context of the will, and it has passed under a bequest of "goods" and also under a bequest of "chattels" used simply and without qualification.(*e*) Where the testator did not bank with the Bank of England, a bequest of "all my moneys in the Bank of England" passed stock in the funds.(*f*) Bank stock, however, will not pass under a gift of "all my moneys and securities for money of every description."(*g*) So where a person is possessed of money in consols and other Government securities, and also of bank stock, and bequeaths "all his fortune standing in the funds," the bank stock does not pass; the reason,

(*a*) *In re Alsbury; Sugden* v. *Alsbury*, 45 Ch. D. 237.
(*b*) *In re Mittam*, 4 Jur. (N.S.) 1077.
(*c*) *Ibid.*
(*d*) *Ex parte Simpson*, 1 De Gex. 9; *Gordon* v. *Dotterill*, 1 M. & K. 56; *Willis* v. *Plaskett*, 4 Beav. 208; *Douglas* v. *Congreve*, 1 Keen, 410; *Hotham* v. *Sutton*, 15 Ves. 319.
(*e*) *Kendall* v. *Kendall*, 4 Russ. 366. See *Willis* v. *Plaskett*, 4 Beav. 208; *Phillips* v. *Eastwood*, 1 Ll. & Go. 291.
(*f*) *Gallini* v. *Noble*, 3 Mer. 691.
(*g*) *Ogle* v. *Knipe*, L. R. 8 Eq. 434.

apparently, being that the words "the funds" have received an interpretation to mean "the public funds," as appears from the Stamp Acts, which have always made a distinction between bank stock and the Government funds.(*h*)

On the other hand, when a person not having either at the date of his will or at the time of his death any bank stock, but having some three and a quarter per cent. annuities, there being no other stock standing in his name, bequeaths "all my bank stock," the annuities will pass.(*i*)

Stamps on Conveyance or Transfer of Bank Stock.—By the Stamp Act, 1891, schedule, the conveyance or transfer, whether on sale or otherwise of any stock of the Bank of England is chargeable with the duty of 7*s.* 9*d.*

Stamps on Bills and Notes.—The promissory notes and bills of exchange of the bank are exempt from stamp duty,(*k*) and are re-issuable after payment as often as the bank thinks fit. But the practice of the bank is never to re-issue a note or a bill which it has once paid.

(*h*) *Slingsby* v. *Grainger*, 28 L. J. Ch. 616; 7 H. L. Cas. 273.

(*i*) *Drake* v. *Martin*, 29 L. J. Ch. 786.

(*k*) 54 & 55 Vict. c. 39, Sched. I. It is submitted that bank post bills would also come within this exception (see *Forbes* v. *Marshall*, 24 L. J. Ex. 305; *Willis* v. *Bank of England*, 4 A. & E. 21). In respect of remuneration to be paid to the Bank of England for the management of unredeemed debt inscribed in their books and of Exchequer bonds and Treasury bills, see 55 & 56 Vict. c. 48.

CHAPTER XXXVI.

BANK OF IRELAND AND BANK OF SCOTLAND.

The Bank of Ireland was established by a Royal Charter in pursuance of an Act of the Irish Parliament,(*a*) and possesses similar privileges to the Bank of England, and is governed by similar principles. The restriction in that Act against the bank lending or advancing money to be secured by mortgage or sale of lands, tenements, or hereditaments, redeemable, has been repealed by 23 & 24 Vict. c. 31.

The 35 Vict. c. 5 alters the charter as to the number and election of the directors.

The 8 & 9 Vict. c. 37 continues the banks' privileges until determined by notice in the *Dublin Gazette*, and regulates the issue of bank notes or bills payable on demand. The notes, bank post bills and bills of exchange of the bank may be signed by machinery.(*b*)

The Bank of Scotland, by the name of the Governor and Company of the Bank of Scotland, was established by an Act of the Scotch Parliament in 1695. The 14 Geo. 3, c. 32, recognises its establishment and continues the Act in force. The Commissioners of the Treasury may compound with the Bank of Scotland, the Royal Bank of Scotland, the British Linen Company, and other Scotch banks, for the stamp duty payable on their notes and bills of exchange.(*c*) The 8 & 9 Vict. c. 38, regulates the issue of bank notes in Scotland.

(*a*) 21 & 22 Geo. 3, c. 16 (Irish).

(*b*) 27 & 28 Vict. c. 78. The provisions respecting remuneration contained in 55 & 56 Vict. c. 48 (*ante*, p. 329 n), apply equally to the Bank of Ireland.

(*c*) 16 & 17 Vict. c. 63, s. 7. By 36 & 37 Vict. c. ccvii., s. 2, the Royal Bank of Scotland may establish a branch in London, but this power shall not authorize it to issue its own bank notes elsewhere than in Scotland.

CHAPTER XXXVII.

CRIMINAL LIABILITY OF OFFICERS AND SERVANTS OF THE BANK OF ENGLAND AND OF THE BANK OF IRELAND.

An officer or servant of the Bank of England or of Ireland, intrusted with any bond, deed, note, bill, dividend warrant, or warrant for the payment of any annuity or interest, or money, or with any security, money, or other effects of or belonging to the Bank of England or of Ireland, or having any bond, deed, note, bill, dividend warrant, or warrant for the payment of any annuity or interest, or money, or any security for money or other effects of any other person, body politic or corporate, lodged or deposited with the Bank of England or of Ireland, or with him as an officer or servant of the Bank of England or of Ireland, secreting, embezzling, or running away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects, or any part thereof, will be guilty of felony,(*d*) and on conviction will be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three(*e*) years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

(*d*) 24 & 25 Vict. c. 96, s. 73.
(*e*) 54 & 55 Vict. c. 69.

CHAPTER XXXVIII.

BANKS OF ISSUE.

Bank of England.—The Bank of England is a bank of issue, and its powers, in this respect, are defined by the 7 & 8 Vict. c. 32, commonly called the Bank Charter Act, 1844.(*a*) By that Act the banking and issue departments were separated, and the bank was authorised to issue from the issue department into the banking department notes payable on demand, to the amount of 14,000,000*l.*, upon the credit of securities of equivalent value first being lodged in the issue department. The amount of these securities or the notes may be diminished from time to time, but cannot be increased(*b*) or exceeded,(*c*) "save in exchange for other Bank of England notes, or for gold coin, or for gold(*d*) or silver bullion.(*e*)

(*a*) The Act is printed in the Appendix of Statutes.

(*b*) Section 5, however, provides for a limited increase of securities and notes. If a country banker shall cease to issue his own notes, an Order in Council may empower the bank to increase the securities, and issue additional notes, but such increase is not to exceed two-thirds of the authorised issue of such banker. In the preamble of the 21 Vict. c. 1, indemnifying the bank, on the occasion of an over-issue, in 1857, the amount of the securities acquired and taken in the issue department is there stated to be limited to 14,475,000*l.* under the provision of the Act and an Order in Council. The bank, by section 9 of the 7 & 8 Vict. c. 32, is to allow the public the profits of its increased circulation, which profits, by the 24 Vict. c. 3, s. 4, are payable between the 6th of April and the 5th of July yearly, to the account of the Comptroller of the Exchequer at the bank.

(*c*) In 1857, the bank having issued notes in excess of its authorised circulation by direction of the Government in order to meet an extraordinary demand for discount and to avoid pressure on the reserves of the bank, the 21 Vict. c. 1, was passed to indemnify the bank, and confirm the issue.

(*d*) By section 4, Bank of England notes may be demanded at the issue department in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold, but it must be melted and assayed at the expense of the parties.

(*e*) Section 3 limits the amount of silver bullion to be retained at a time by the bank in the issue department to one-fourth of the gold coin and the bullion in that department.

purchased or received for the issue department or in exchange for securities acquired and taken in that department."

An account of the notes in circulation and of the securities in the issue department, as well of the capital stock, deposits, moneys and securities in the banking department, is to be transmitted weekly to the Commissioners of Stamps and Taxes,(*f*) and published in the *Gazette*.

The notes of the bank payable to bearer on demand are exempt from stamp duty,(*g*) and may be signed by machinery instead of being written by cashiers of the bank.(*h*)

Other Banks of Issue.—No bank other than the Bank of England and those banks lawfully issuing such instruments on the 6th of May, 1844, can issue bills or notes payable on demand.(*i*)

(1.) By the 39 & 40 Geo. 3, c. 28, s. 15, it was forbidden to establish any corporate bank whatever, or any bank where the number of bankers in partnership should exceed six, so as "to borrow owe, or take up any sum or sums of money, on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof," during the continuance of the privileges secured to the Bank of England, by former Acts of Parliament.(*k*)

(2.) In 1826, the 7 Geo. 4, c. 46, was passed, legalising the formation under deeds of settlement of banking co-partnerships consisting of more than six persons, provided they did not carry on business within the distance of sixty-five miles from London, and had not any of their banking establishments in London. Every member was also responsible for the payment of all bills and notes issued, and for all sums of money borrowed, owed or taken up, by the co-partnership. These restrictions and conditions were imposed by the first section of the Act.(*l*)

(*f*) By the 12 & 13 Vict. c. 1, the commissioners were first called the Commissioners of Inland Revenue. See further 53 & 54 Vict. c. 21, s. 1 (1).
(*g*) 7 & 8 Vict. c. 32, s. 7.
(*h*) 16 & 17 Vict. c. 2, s. 1.
(*i*) 7 & 8 Vict. c. 32; see *post*.
(*k*) The same was in effect enacted by 7 Anne, c. 30, s. 61.
(*l*) The acceptance by one of these co-partnerships of a customer's bill, at less than six months' date, on account of a balance in favour of the

(3.) By 9 Geo. 4, c. 23, s. 1, it was enacted, that it should be lawful for *any person or persons carrying on the business of a banker or bankers* in England (except within the city of London or within three miles thereof), having first duly obtained a license for that purpose, and giving security by bond, to issue, on unstamped paper, promissory notes for any sum of money amounting to five pounds or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to order, on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof: *provided* such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster or the borough of Southwark; or *provided* such bills of exchange be drawn by any banker or bankers at a town or place where he or they shall be duly licensed to issue unstamped notes and bills, under the authority of this Act, upon himself or themselves, or his or their co-partner or co-partners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

(4.) But by 3 & 4 Will. 4, c. 98, s. 2, it was enacted, that banks consisting of more than *six* persons should not have the power to issue notes payable on demand in London or within sixty-five miles thereof; but were permitted, by section 3, to carry on the business of banking within the above limits, provided they did not issue bills or notes at less than six months' date.(*a*)

(5.) By section 10 of 7 & 8 Vict. c. 32, as above stated, it is enacted that no person, other than a banker, who, on the 6th of May, 1844, was lawfully issuing his own bank notes, shall make or issue bank notes in any part of the United Kingdom.

customer, was a *borrowing* in point of law, within the meaning of this statute. The drawing of a bill, at a longer period than six months, though the acceptance was within six mouths of its maturity, was a violation of the provisions of the statute, and no person, who was privy to it, could enforce the acceptance (*Booth* v. *Bank of England*, 6 Bing. N. C. 415). So, where a London joint stock bank, consisting of more than six persons, agreed with a Canadian bank that the manager of the London bank should accept bills drawn by the Canadian bank, payable at a date earlier than six months, and the London bank should provide funds for meeting them, the House of Lords held that the acceptance of such bills was unlawful, and an infringement of the privileges of the Bank of England (*Perrin* v. *Dunston*, R. & M. 426).

(*a*) Under this section, it was held that a partnership consisting of more than six persons, and within sixty-five miles of London, could not accept a bill of not less than six months' date drawn by a customer upon them (*Bank of England* v. *Anderson*, 3 Bing. N. C. 589).

And by section 11, after the 19th of July, 1844, it shall not be lawful for any banker to draw, accept, make or issue, in England or Wales, any bill of exchange or promissory note, or engagement for the payment of money, payable to bearer on demand, or to borrow, owe or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker, who was on the 6th of May, 1844, carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes under the authority of a license to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership, now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole. On the death of any of the members of a firm, the privilege of issuing notes continues to the surviving members.(*b*) And by section 26, any society or company or any persons in partnership, though exceeding six in number, and carrying on business in London, or within sixty-five miles thereof, may draw, accept or indorse bills of exchange, *not being payable to bearer on demand.* The 3 & 4 Will. 4, c. 98, s. 3, is, therefore, repealed in respect of this restriction.(*c*)

By section 12 of 20 & 21 Vict. c. 49, it was enacted that notwithstanding anything contained in any Act, any number of persons not exceeding ten may carry on in partnership the business of banking in the same manner and upon the same conditions in all respect as any company of not more than six persons could do before the passing of the Act.

This Act was repealed by the Companies Act, 1862, but the above section is kept in force by section 205. The result of the above Acts seem to be as follows:—

(1.) The Bank of England is authorized to issue bills or notes payable to bearer on demand throughout the whole of England and of Wales.

(*b*) *Smith* v. *Everett*, 27 Beav. 446; 29 L. J. Ch. 236.
(*c*) See also Chapter XLIII. on "Joint-Stock Banks," *post.*

(2.) Banks of not more than six persons (now not exceeding ten) who were lawfully issuing their notes on the 6th of May, 1844, may issue bills or notes payable to bearer on demand on unstamped paper beyond three miles of London and within sixty-five miles.

(3.) And beyond sixty-five miles of London the right to issue such bills and notes is shared by all banks who were lawfully issuing their notes on May 6th, 1844.

A banker, who becomes bankrupt, or ceases to carry on his business, or discontinues to issue his own notes, is prohibited from recommencing or resuming the issue.(*a*)

(*a*) 7 & 8 Vict. c. 32, s. 12. This section was discussed in the comparatively recent case of *Attorney-General* v. *Birkbeck*, 12 Q. B. D. 605. In that case the facts were as follows :—

In 1880 a firm of bankers, entitled to issue their own notes under the exception in section 11, sold their business to a limited liability company upon the following terms :—The company took over the whole of the business as a going concern, and the good-will, except and reserving to the firm the right to issue their own notes, but including in the sale and purchase such benefit of the issue as was thereby agreed to be given to the company ; the firm were to issue their notes in the same form as theretofore, but through the company's officers only, and might nominate those officers and make the returns required by statute through them : the company were to allow and pay the firm 2 per cent. interest on the amount of all notes from time to time in circulation ; for the purposes of the issue only the firm might continue to use their accustomed name, but they were not to assign their rights, nor to take new partners for the purpose of continuing the issue without the consent of the company, nor to carry on the business of banking within a defined district without the like consent, except so far as related to the issue of their notes under the agreement ; if the right of issue should at any time be taken away from the firm they were to pay any compensation they might receive to the company, unless the company should get an equal right of issue, in which case the firm might retain the compensation ; if the company acqured a right to issue their own notes, the firm's right of issue was to cease. When the business was taken over by the company, a large number of the firm's notes being in circulation, the amount of them was deducted from the purchase money, and the notes, when presented for payment, were cashed by the company, and re-issued by them. Notes in hand when the business was taken over were treated as cash lent by the firm to the company. Daily returns were made by the company shewing the number of the firm's notes in circulation, and twice a year the company paid 2 per cent. interest to the firm on the amount so ascertained. On an information against the firm and the company for penalties in respect of their having issued the notes contrary to the provisions of the Act :—Held, that the company had "issued" the notes within the meaning of section 11 of the Bank Charter Act, 1844 ; that the firm, in issuing the notes, were not protected by the exception in section 11, because after the making of the agreement they had "ceased to carry on the business of bankers" within the meaning of section 12 ; and, therefore, that all the defendants were liable.

Weekly Returns and Monthly Averages.—By section 18 of 7 & 8 Vict. c. 32, banks of issue are to render in a given form weekly accounts to the Inland Revenue of the amount of their notes in circulation under a penalty of 100*l.*; and by section 19, a mode of ascertaining the average amount of bank notes in circulation is prescribed; and by section 15, the *London Gazette* is made conclusive evidence in all courts of the amount of bank notes which the banker named in the certificate of the commissioners is by law authorized to issue and to have in circulation.

Any excess, above the limited monthly average circulation, is prohibited by 7 & 8 Vict. c. 32, s. 17, under the forfeiture of a sum equal to the amount in excess of the authorised circulation.

The commissioners (by section 20) are empowered (with the consent of the Treasury), to examine, copy or make extracts from the books of all banks of issue, containing accounts of the notes in circulation, to ensure the rendering of true accounts.

Return of Names to the Stamp Office.—By section 21, every banker in England and Wales is bound under a penalty of 50*l.* on the 1st of January in each year, or within fifteen days afterwards, to make a return to the Inland Revenue Office of his name, residence and occupation; and in the case of a company or partnership, of the name, residence and occupation of every member of the company or partnership, and also the name of the firm under which the banker or company carries on business, together with the names of the places of their business.

The 8 & 9 Vict. c. 76, s. 5, prescribes the mode of recovering and applying the penalties.

Uniting of Banks of Issue.—Provision is made by 7 & 8 Vict. c. 32, s. 16, for the purpose of facilitating the union or amalgamation of banking establishments, as far as regards the circulation of their notes.

By Co-partnerships under 7 *Geo.* 4, *c.* 46.—Banking co-partnerships established under this statute are entitled, by section 16, to issue and re-issue notes, without being stamped, upon security being given, but the enactment must be read in conjunction with the provisions of 7 & 8 Vict. c. 32, ss. 12 and 18, as to becoming bankrupt, and rendering accounts of their issue and circulation.

On issuing bills or notes before making the returns, they forfeit 500*l.* for each week of their neglect, by section 18.

Irish and Scotch Banks.—The issue of bank notes in Ireland(*a*) and in Scotland(*b*) is governed by similar provisions and restrictions as the English banks are by the Bank Charter Act of 1844.

Bankers' Licenses.—Bankers and joint-stock banks in England, Ireland, and Scotland, authorised to issue bank notes, must take out annual licenses, on which a duty of 30*l.* is payable respectively. The 55 Geo. 3, c. 184, schedule, title "License,"(*c*) unrepealed by 33 & 34 Vict. c. 99, and the 24 & 25 Vict. c. 91, s. 35, regulate the grant of these licenses in England and Scotland, and 9 Geo. 4, c. 80, and 5 & 6 Vict. c. 82, s. 31, also unrepealed by 33 & 34 Vict. c. 99, as to Ireland.

The 9 Geo. 4, c. 23, enabled bankers in England, except within the city of London or within three miles, as already stated,(*d*) to issue their promissory notes and to draw bills of exchange not exceeding seven days after sight, or twenty-one days after date, on the condition of obtaining a license. Thus, by section 2:—

It shall be lawful for any two or more of the Commissioners of Stamps (now the Inland Revenue) to grant to all persons carrying on the business of bankers in England (except as aforesaid), who shall

(*a*) 8 & 9 Vict. c. 37. This Act is in the Appendix of Statutes.

(*b*) 8 & 9 Vict. c. 38, which is inserted in the Appendix of Statutes.

(*c*) The terms in which the duty is imposed are as follows:—"License to be taken out yearly by any banker or bankers, or other person or persons, who shall issue any promissory notes for money payable to the bearer on demand, and allowed to be re-issued, 30*l.*"

(*d*) See *ante*, p. 334.

require the same, licenses authorising such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which licenses shall be and are hereby respectively charged with a stamp duty of thirty pounds for every such license.

By section 3, a separate license shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: Provided always, that no person or persons shall be obliged to take out more than four licenses in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or places, then, after taking out three distinct licenses for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in a fourth license.

By 7 & 8 Vict. c. 32, s. 22, every banker who shall be liable by law to take out a license from the Commissioners of Stamps and Taxes (now the Inland Revenue), to authorise the issuing of notes or bills, shall take out a separate and distinct license for every town or place at which he shall, by himself or his agent, issue any notes or bills requiring such license to authorise the issuing thereof, anything in any former Act contained to the contrary thereof notwithstanding: Provided always, that no banker, who, on or before the 6th of May, 1844, had taken out four such licenses which on the said last-mentioned day were respectively in force, for the issuing of any such notes or bills, at more than four separate towns or places, shall at any time hereafter be required to take out or to have in force at one and the same time more than four such licenses, to authorise the issuing of such notes or bills at all or any of the same towns or places specified in such licenses in force on the 6th of May, 1844, and at which towns or places respectively such bankers had on or before the said last-mentioned day issued such notes or bills in pursuance of such licenses or any of them respectively.

By 9 Geo. 4, c. 23, s. 4, every license granted under the authority of that Act shall specify all the particulars required by law to be specified in licenses to be taken out by persons issuing promissory notes, payable to bearer on demand, and allowed to be re-issued; and every such license which shall be granted between the 10th of October and the 11th of November in any year shall be dated on the 11th of October, and every such license which shall be granted at any other time shall be dated on the day on which the same shall be granted; and every such license shall (notwithstanding any alteration which may take place in any co-partnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof, until the 10th of October then next following, both inclusive, and no longer.

Joint Stock Banks' Licenses.—The 24 & 25 Vict. c. 91, s. 35, enacts, that, where a company or co-partnership consists of more than six persons, it shall be sufficient to specify in the license or certificate the names and places of abode of any six or more of such persons who may be presented to the commissioners, and to grant the license or certificate to them as and for the whole of the company or co-partnership, or otherwise to specify only the name or style of the company or co-partnership, and to grant the license or certificate to such company or co-partnership, in and by the said name or style, as the commissioners may think fit; and such license and certificate are to be as good and available as if the names and places of abode of all the members of the company or co-partnership had been specified therein, and the license had been granted to them.

Stamp Duties on Bank Notes.—The Stamp Act, 1891, imposes or rather re-enacts the duty payable on bank notes, which are issuable and re-issuable by licensed bankers.(*a*)

(*a*) See the schedule thereto, wherein the duties imposed are as follows:—

						£	s.	d.
For money not exceeding 1*l*.				...	...	0	0	5
Exceeding	1*l*.	and not exceeding	2*l*.		...	0	0	10
"	2*l*.	"	5*l*.		...	0	1	3
"	5*l*.	"	10*l*.		...	0	1	9
"	10*l*.	"	20*l*.		...	0	2	0
"	20*l*.	"	30*l*.		...	0	3	0
"	30*l*.	"	50*l*.		...	0	5	0
"	50*l*.	"	100*l*.		...	0	8	6

By section 29, the term "banker" means any person (and by the Interpretation Act, 1889, s. 2, "person," in relation to persons, includes a body corporate) carrying on the business of banking in the United Kingdom; and the term "bank note" means and includes—

(1.) Any bill of exchange or promissory note issued by any banker, other than the Bank of England, for the payment of money, not exceeding 100*l*., to the bearer on demand; and

(2.) Any bill of exchange or promissory note so issued, which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding 100*l*. on demand, whether the same be so expressed or not, and in whatever form, and by whomsoever such bill or note is drawn or made.

Stamped Bank Notes.—Bankers licensed under 9 Geo. 4 c. 23, to issue unstamped notes are, by section 6, prohibited from issuing for the first time their promissory notes for payment of money to the bearer on demand on stamped paper.(*b*)

Security on Issue of Unstamped Bank Notes.—Bankers licensed to issue their unstamped paper are required, by 9 Geo. 4, c. 23, s. 7, to give security by bond to the Crown, and by sections 10 and 11 provisions are made to meet changes in partnership in banks, and requiring fresh securities in such cases, and enforcing the renewal of the bonds.(*c*)

Composition in lieu of Stamp Duties.—By 9 Geo. 4, c. 23, s. 7, and 17 & 18 Vict. c. 83, s. 12, country and other bankers in England, authorised to issue promissory notes and bills of exchange, may compound for the stamp duties payable on their notes and bills; and thereupon they may issue and re-issue their notes on unstamped paper.(*d*) The 5 & 6 Vict. c. 82, s. 2, extends this privilege to bankers in Ireland in respect of their notes.(*d*) The Commissioners of the Treasury (now the Inland Revenue) may compound

By section 30, a bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing.

By section 31 (1). If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall forfeit 50*l*.

By section 31 (2). If any person receives or take any such bank note in payment or as a security, knowing the same to have been issued unstamped contrary to law, he shall forfeit 20*l*.

(*b*) For the text of this Act, see Appendix.

(*c*) An affidavit verifying the return of the issue by a banker of unstamped bills and notes under 9 Geo. 4, c. 23, may be sworn either before a justice of the peace under section 7, or before a commissioner to administer oaths in chancery under 54 & 55 Vict. c. 38, s. 24. The manager of a bank is a chief officer within 9 Geo. 4, c. 23, s. 7, which requires such affidavit to be made by a cashier, accountant, or chief clerk. *Reg.* v. *Greenland*, 10 Cox C. C. 377; 1 L. R. C. C. 65; 36 L. J. M. C. 37.

(*d*) The composition is as follows:—

	s.	d.
For every 100*l*., and also for the fractional part of 100*l*., of the average amount, or value of such notes or bills in circulation during every half-year	3	6

with bankers in Scotland or elsewhere for the stamp duties on promissory notes, payable to bearer on demand, and on their bills of exchange. On the composition being entered into, the bankers are entitled to issue and re-issue their notes and draw bills on unstamped paper.(*a*) The 27 & 28 Vict. c. 86, extended this provision to bankers in Ireland in respect of the duties payable on bank post bills of 5*l.* or upwards. The Act was originally limited in its operation to bank post bills issued during three years from the 29th of July, 1864, but the 30 & 31 Vict. c. 89, has made the enactment perpetual.

Composition with Bank of England on relinquishing Issue.—The power of the Bank of England to enter into compositions with bankers, on discontinuing the issue of their own notes, was limited to the 1st of August, 1856,(*b*) but a subsequent statute has extended the period, until Parliament shall prohibit the issue of bank notes, or until the privileges of the bank shall be determined.(*c*) It has been held that such compositions cease to be payable if and when such bankers cease to carry on business. A company was incorporated for the purpose of purchasing and carrying on the business of four banks—two of which carried on business in London, one at Bristol, and one at Bath. The Bristol bank was entitled, under section 24, and the Bath bank under section 23 of the Bank of England Charter Act, 1844, to be paid by the Bank of England, a composition for having ceased to issue their own bank notes. The four firms agreed to sell their businesses to the company when formed, the consideration being the allotment to them of shares in the company, and also agreed that they would not in future carry on business as bankers. This agreement was adopted by the company when formed, and the businesses of the four banks were thenceforth carried on by the company in its own name at the same

(*a*) 16 & 17 Vict. c. 63, s. 7.
(*b*) 7 & 8 Vict. c. 32, s. 25.
(*c*) 19 & 20 Vict. c. 20.

places as before, and with the same staffs of clerks:—Held, that the banks must be taken to have ceased to carry on their business, and that the company was not entitled to be paid any composition by the Bank of England.(*d*) Banking co-partnerships, surrendering their right to issue their own notes, by agreement with the Bank of England, do not lose the privilege of suing and being sued in the name of their public officer.(*e*)

Issue of Bank Notes under 5l.—Bank notes payable to bearer on demand for 20*s.* or above that sum, and less than 5*l.*, were prohibited to be issued or re-issued by the Bank of England or any banker in England after the 5th of April, 1829.(*f*) In Ireland(*g*) and Scotland(*h*) such notes are legal, if issued by bankers who were entitled to issue their own bank notes prior to the year 1845, and who have obtained the certificate of the Commissioners of Inland Revenue, authorizing them to continue to do so. But these notes must not be for the payment of a fraction of a pound.(*i*)

Foreign Banks of Issue.—These banks are regulated in their issue by the laws of the countries in which they are established.(*k*) The right to regulate the coinage and issue the paper money of a State is part of its sovereign prerogatives, recognized by the law of nations, and will be protected by our Courts, when infringed or invaded. Certain persons in this country had manufactured docu-

(*d*) *Prescott, Dimsdale, and others* v. *Bank of England* (1894), 1 Q. B. 351, distinguishing *In re Capital and Counties Bank*, 61 L. T. 516, where it was held that the Hampshire Bank (which had the right to the composition by absorbing other banks into itself) did not lose its identity, but still carried on the same business, although it changed its name and place of business. See also the same cases as to whether the right to composition is commensurate with the right to issue notes.

(*e*) 27 & 28 Vict. c. 32.

(*f*) 7 Geo. 4, c. 6, s. 3.

(*g*) 8 & 9 Vict. c. 37, ss. 8, 26.

(*h*) 8 & 9 Vict. c. 38, ss. 1, 18.

(*i*) 8 & 9 Vict. c. 37, s. 15; 8 & 9 Vict. c. 38, s. 5.

(*k*) *Emperor of Austria* v. *Kossuth*, 2 Giff. 628; S. C., on appeal, 30 L. J. Ch. 690.

ments purporting to be the notes of a foreign State, the Court of Chancery, at the instance of the sovereign of the State, who alleged that the introduction of such notes into his dominions would cause great detriment to his subjects, directed the manufacturers to deliver up the notes to be destroyed, and the plates from which they had been manufactured, and restrained such persons from manufacturing such notes.(*a*) But the Courts will not interfere with the mode in which the sovereign of a foreign State concedes or grants the right of issuing notes to others.(*b*)

Therefore, where a bill was filed in the Court of Chancery against the Ottoman Bank, its directors, and the Sultan, alleging that the Sultan's Government had granted to the plaintiffs the exclusive right of issuing bank notes in Turkey, and had subsequently in derogation of that grant made a similar concession to the Ottoman Bank, and prayed for a declaration of the plaintiff's exclusive right, and an injunction against the Ottoman Bank and its directors: it was held, that, inasmuch as the Court had no jurisdiction on the contract or concession as against the Sultan, it had none against the bank and its directors.(*b*)

Colonial Banks of Issue.—Banks of issue in India and in the Colonies are regulated by local laws,(*c*) or by charters from the Crown.

Limited Banking Companies.—A banking company claiming to issue notes in the United Kingdom is not entitled to limited liability, but continues subject to unlimited liability in respect of such issue.(*d*)

The negotiability and payment of bank notes will be considered in the next Chapter.

(*a*) *Emperor of Austria* v. *Kossuth*, 2 Giff. 628; S.C., on appeal, 30 L. J. Ch. 690.

(*b*) *Gladstone* v. *Ottoman Bank*, 1 H. & M. 505.

(*c*) See *Oriental Bank Company* v. *Wright*, 5 App. C. 842; 50 L. J. P. C. 1.

(*d*) The Companies Act, 1879 (42 & 43 Vict. c. 76), s. 6.

CHAPTER XXXIX.

BANK NOTES.

MOST questions respecting Bank of England and country bank notes may be considered together. The right to issue bank notes and their liability to stamp duty have been stated in the last Chapter.

Definition of Bank Notes.—What shall be deemed bank notes, within the meaning of the Bank Charter Act of 1844, and the Acts regulating the issue of bank notes in Ireland and Scotland, as regards the enactments concerning stamps, has been subsequently defined by the 17 & 18 Vict. c. 83, s. 11, as follows:—

"All bills, drafts or notes, other than notes of the Bank of England, which shall be issued by any banker, or the agent of any banker, for the payment of money to the bearer on demand; and all bills, drafts or notes so issued which shall entitle or be intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of any sum of money on demand, whether the same shall be so expressed or not, in whatever form and by whomsoever such bills, drafts or notes shall be drawn or made, shall be deemed to be bank notes of the banker by whom or by whose agent the same shall be issued within the meaning of the 7 & 8 Vict. c. 32, and 8 & 9 Vict. cc. 37 and 38."

And by section 12, all bills, drafts and notes which by or under these Acts are declared or deemed to be bank notes, shall be liable to the duties and composition for stamp duties, imposed by or payable under any Act or Acts in force upon or in respect of promissory notes for the payment of money to the bearer on demand; and all clauses, provisions,

regulations, penalties and forfeitures, contained in any Act or Acts relating to the issuing of such notes, or for securing the stamp duties and composition, or for preventing or punishing frauds or evasions in relation thereto, shall be deemed to apply to all such bills, drafts and notes as aforesaid, and to the stamp duties and composition payable upon or in respect thereof.

Bank of England Notes treated as Cash.—"Bank notes," said Lord MANSFIELD in *Millar* v. *Race*, referring to Bank of England notes, "are not goods, nor securities nor documents for debts, nor are they so esteemed, but are treated as money, as cash, in the ordinary course and transaction of business by the general consent of mankind, which gives them the credit and currency of money, to all intents and purposes. They are as much money as guineas themselves are, or any other current coin that is used in common payments as money or cash. They pass by a will which bequeaths all the testator's money or cash, and are never considered as securities for money, but as money itself. On payment of them, whenever a receipt is required, the receipts are always given as for money, not as for securities or notes. So, in bankruptcies, they cannot be followed as identical and distinguishable from money, but are always considered as money or cash."(*a*)

Bank notes, whether of the Bank of England or of private banks, may, however, now be taken in execution under a writ of *fieri facias*;(*b*) and, consequently, they are now looked upon as goods and chattels within the meaning of the statute against fraudulent conveyances (the 13 Eliz. c. 5), so that a voluntary or fraudulent gift of them is void against creditors.(*c*)

(*a*) *Millar* v. *Race*, 1 Burr. 452; *Chapman* v. *Hart*, 1 Ves. Sen. 271; *Popham* v. *Lady Aylesbury*, Ambl. 68; *Mahony* v. *Donovan*, 14 Ir. Ch. Rep. 262, 388.

(*b*) 1 & 2 Vict. c. 110, s. 12.

(*c*) *Barrack* v. *M'Culloch*, 26 L. J. Ch. 105.

Tender or Payment in.—At common law, a tender in Bank of England notes of a debt was a good tender, if the creditor did not object to receive *notes* in payment ;(*d*) and by 3 & 4 Will. 4, c. 98, s. 6, such notes are now made a legal tender for all sums above 5*l.*, except at the Bank of England or its branches, so long as the Bank of England continues to pay on demand their notes in legal coin.

Country bank notes are only a good legal tender when not objected to at the time,(*e*) such notes being considered as cash only in the absence of any objection being taken to them ; and in this respect a country banker stands in the same position, as regards a tender to him of his own notes, as any other person.(*f*)

Country Notes given for Goods Sold.—Where country notes are given without indorsement for goods sold and they turn out to be worthless, the loss falls upon the vendor of the goods.(*g*)

Such notes are transferable by delivery merely, and the person transferring is *not liable* thereon, there being no indorsement to the transferee or taker.

Nor is he liable *on the consideration* for which the bank note was given, for, by the delivery, without indorsement, there, *primâ facie*, has taken place a sale of the instrument ; the one party hands over the goods, or whatever else formed the consideration for paying over the instrument representing the value or agreed price of the goods, and the other party hands over the note, the whole forming one transaction ; and the law does not imply that he guarantees the solvency of the bankers.(*h*)

(*d*) *Grigby* v. *Oakes*, 2 B. & P. 526; *Wright* v. *Reed*, 3 T. R. 554 ; *Anon.*, 1 Eq. Cas. Abr. 318, 319.
(*e*) *Polglass* v. *Oliver*, 2 C. & J. 15.
(*f*) *Forster* v. *Wilson*, 12 M. & W. 201.
(*g*) *Camidge* v. *Allenby*, 6 B. & C. 373 ; *Robson* v. *Oliver*, 10 Q. B. 704.
(*h*) See per LITTLEDALE, J., *Camidge* v. *Allenby*, 6 B. & C. 385. See *ante*, p. 42.

Pre-existing Debt.—If, however, a country bankers' note is handed over on account of a previously existing debt the note is not considered as sold, therefore, if the note is presented in due time at the bankers', and the bankers having stopped payment, it is not paid, and due notice of the dishonour of it is given to the transferor, the transferee may have recourse to his original remedy for the antecedent debt,(*a*) for the creditor is entitled to cash, and if he takes notes, that is, out of favour to the debtor, and it will be inferred, unless there is evidence to the contrary, that the notes were agreed not to be payment, if they turned out to be of no value, without laches in presenting, or other default of the taker. Perhaps this may be a sufficient ground upon which to rest the exception (if it be one) to the rule; but be that as it may, the exception seems to stand upon authority, though the rule is seemingly clear that a banker's note payable to bearer on demand delivered without indorsement, not in payment of a debt already due, but by way of a single transaction, as of an exchange for goods or for other notes, or for money is sold to the party receiving it, who takes it with all risks, the transaction being *bonâ fide*.(*b*)

In either case, whether the bank note is taken at the time of the sale, or for change, or for an antecedent debt, if the transferee can show fraud, as that the transferor knew the banker to be in a state of insolvency at the time, the former may recover from the latter.(*c*)

Country Bank Notes paid into Bank.—Where country notes are paid into a bank by a customer, and subsequently prove to be valueless, owing to the failure of the bank issuing them, the loss falls on the customer, provided his banker has not been guilty of negligence in presenting the notes. An entry under such circumstances giving

(*a*) *Camidge* v. *Allenby*, 6 B. & C. 373; *Roger* v. *Langford*, 1 C. & M. 637; *Lichfield Union* v. *Greene*, 26 L. J. Ex. 140; 1 H. & N. 884.

(*b*) *Fenn* v. *Harrison*, 3 T. R. 759; *Evans* v. *Whyle*, 5 Bing. 485.

(*c*) Per BAYLEY, J., *Camidge* v. *Allenby*, 6 B. & C. 373; per BRAMWELL, B., in *Lichfield Union* v. *Greene*, 26 L. J. Ex. 140; 1 H. & N. 884.

credit for the amount represented by the notes is *primâ facie* evidence that cash was actually received for them, but the banker is entitled to show that, as a matter of fact, they were dishonoured on due presentation.(*d*)

Forged Notes.—As has been noticed, when country bank notes are taken at the same time that goods are sold, or a consideration of any sort passes, all in one uninterrupted transaction, the transferor of the bank notes is not considered as guaranteeing the solvency of the banking house that issues them, and the transferee takes them for better and for worse.

But although the transferor does not, under these circumstances, take the risk of the solvency of the makers of the notes, he does warrant the genuineness of the instrument and that he has a good title thereto, and is not aware of any fact that renders it valueless, and must, consequently, bear the loss, if it turns out to be forged,(*e*) provided the taker of the note repudiates the transaction within a reasonable time.(*f*)

Agreement Express or Implied providing against Insolvency.—It is not to be doubted, however, that the parties on every occasion of handing over country bank notes, whether upon a consideration antecedent or concomitant, would certainly be bound by an express agreement providing for the insolvency of the maker of the notes; in either case, the party receiving the notes may stipulate—"I will not bear the loss, in case the banker has stopped payment within a reasonable time for presentment of them, and before they are paid." So, in the case of a person asking another to give him change for a bank note, it must be inferred that the note is taken

(*d*) *Timmis* v. *Gibbins*, 21 L. J. Q. B. 402; 18 Q. B. 722.
(*e*) Bills of Exchange Act, 1882, s. 58. *Fuller* v. *Smith*, R. & M. 49; *Smith* v. *Mercer*, 6 Taunt. 76; *Jones* v. *Ryde*, 5 Taunt. 488; 1 Marsh, 157; *Leeds County Bank, Limited* v. *Walter*, 11 Q. B. D. 84. See *ante*.
(*f*) *Pooley* v. *Brown*, 31 L. J. C. P. 134.

conditionally, and that the taker shall not bear the loss, provided he does all that is necessary on his part as to presentment and giving notice of dishonour, but not otherwise.(*a*)

Time for Presentment.—Bank notes are not intended to be a continuing security so as to entitle a holder thereof to retain them, and, consequently, he must, as a rule, present them or cause them to be presented the day after he receives them, in order that he may, when he has a right to do so, sue the person from whom he took them upon the consideration.(*b*) It would seem that a further day wherein to present for payment would be allowed where the notes have been received by an agent or servant.

As to what is due time to present for payment a banker's note, after the receipt of it, various cases have been decided. A. sent his servant to a town, fourteen miles from his residence, to sell cattle; the servant sold them, and took country bank notes in payment from B. (this was about one o'clock on a Friday afrernoon), and paid them over to his master (who had been from home the whole of Friday) on settling with him on Saturday evening. A. presented the notes the following Monday morning at the banking house, when it was found that the bank had stopped payment on the previous Saturday, between three and four o'clock. Under these circumstances, the Court considered that A. was entitled to recover from B. the amount of the notes, as A. had not been guilty of such laches, by not presenting the notes on Saturday morning, as made the notes his own, but intimated that the result would probably have been different if the servant had been identified with

(*a*) *Camidge* v. *Allenby*, 6 B. & C. 373. It is sufficient to rebut any charge of negligence if the taker negotiates the bills within the same time as that allowed for presentment (*ibid.*; *Robinson* v. *Hawksford*, 9 Q. B. 52; 15 L. J. Q. B. 377). When the holder transmits them for payment he may cut the notes in half and send one set of halves on the next day and the other on the day following. *Williams* v. *Smith*, 2 B. & Ald. 496, and see "Byles on Bills," p. 282.

(*b*) See *Van Wort* v. *Woolley*, 3 B. & C. 446, 447; *Timmis* v. *Gibbins*, 21 L. J. Q. B. 405; 18 Q. B. 722; *Woodland* v. *Fear*, 7 El. & Bl. 519; *Turner* v. *Stone*, 1 D. & L. 122.

the master.(c) It seems if the master had himself sold the cattle, and taken the notes for them, in one uninterrupted transaction, he would at once have made his election to take the notes as payment, according to the doctrine above stated, so that, independently of the question of laches, he must, in that case, have borne the loss. The Court, if the case is duly reported, does not seem to have had present in their minds the distinction between giving bank notes, in completion of a sale, and giving them in discharge of a precedent debt.

When Presentment Excused.—It is quite clear in general, that in case of a country bank note, made payable at the banking house, there must be a presentation for payment there, before a right of action accrues,(d) and merely alleging the insolvency of the house as a reason for non-presentment is not sufficient ;(e) though it would seem that the actual closing of a bank amounts to a refusal to all the world to pay its notes and excuses presentation, provided that within a reasonable time the transferee gave the other party notice that the notes were valueless, and offered to retain them.(f)

The stopping payment by a bank, which issues notes payable on demand does not preclude the necessity of demanding payment in order that interest may become payable.(g) Therefore, where a banking company stopped payment and it was wound up, and the debts were being paid in full ; it was held that interest at 5*l*. per cent. was payable on all promissory notes, drafts and other negotiable securities current at the time of the stoppage, not from the time of the stoppage, but from the respective times of the

(c) *James* v. *Houlditch*, 8 D. & R. 3.

(d) *Saunderson* v. *Bowes*, 14 East, 500 ; *Dickenson* v. *Bowes*, 16 East, 110.

(e) *Russell* v. *Longstaff*, Doug. 496 ; *Warrington* v. *Furbur*, 8 East, 245.

(f) *Rogers* v. *Longford*, 1 C. & M. 637 ; *Robson* v. *Oliver*, 10 Q. B. 904 ; *Howe* v. *Bowes*, 5 Taunt. 30; "Byles on Bills," p. 287 ; and Bills of Exchange Act, s. 46 (1), (2).

(g) *In re Herefordshire Banking Company*, 36 L. J. Ch. 806.

claims in respect thereof being sent in to the liquidators, the stoppage of the bank not operating to dispense with the necessity of making a demand.(*a*)

Notice of Dishonour.—The same rule as to notice of dishonour of bills of exchange, and notice of dishonour of country bankers' notes, has always prevailed. By the Bills of Exchange Act, 1882, s. 49, it is now provided that the notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(1) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(2) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.(*b*)

A., being previously indebted to B. in 500*l.*, on a Friday, about eight or nine A.M., paid to B., at his residence at Wantage, 490*l.* in notes of the Newbury Bank, and 10*l.* in a note of the Wantage Bank, B. giving him a receipt for 500*l.* on the back of the promissory note by which the loan had been secured.

B. immediately sent 450*l.* of the notes to his bankers at Wantage, with orders to transmit the Newbury Bank notes (which were made payable on demand at the bank at Newbury, or at the bank of Messrs. Barnard & Co., London) to London, to buy an Exchequer Bill. Wantage is distant from Newbury about eighteen miles, and was a two days' post from one place to the other ; the post left Wantage for London at half-past five o'clock, P.M., every day, *except Saturdays*.

(*a*) *In re East of England Banking Company*, 38 L. J. Ch. 121.
(*b*) See further as to notice of dishonour, *ante*, p. 50.

When B.'s messenger got to the bank, and delivered his message, with the above order, one of the partners said it would be dangerous to send the notes to London, and, therefore, declined or refused to send them by post that evening, but offered to enclose them on the Saturday evening, in their packet which they usually sent in the course of their business as bankers, two or three times a week, by the coach, to London, and which packet, he said, would be in London on Monday. This was ultimately agreed to, and on the Saturday evening 450*l*. of Newbury Bank notes were, by the bankers at the Wantage Bank, cut in halves, and one set of halves enclosed in their packet, and transmitted the same evening to London. They usually sent their notes half by the coach, and half by the post, and the other set of halves were sent by post on the Sunday evening, addressed to the London correspondents of the Wantage Bank; these halves reached them between ten and eleven A.M. on the Monday, and the packet, containing the other halves, was delivered to them somewhat later the same day.

The Newbury Bank stopped payment the same morning, but their correspondents in London, Messrs. Barnard & Co., continued to pay the Newbury notes the whole of Monday, but not afterwards, and the notes in question would have been paid if they had been presented in the course of Monday. When they were presented to Barnard & Co. on Tuesday they were dishonoured.

Notice of the stopping of the Newbury Bank being communicated to B. on the evening of Monday, he immediately sent a messenger to A.'s house, who stated it to A.'s wife, A. himself having gone to bed; A., the same evening, said he would take the notes again, and return them to the person from whom he had received them. He afterwards refused to take back the notes.

In an action against him by B., it was held that B. was entitled to recover, for that if the notes had been sent direct by the post to Newbury, they would not have been

paid as the bank had stopped on the Monday; and that sending the half notes to London was a reasonable precaution, and one which, therefore, B. had a right to adopt.(a)

Exchanging Notes.—It is a custom among country bankers who reside in the same district to exchange each other's notes once or twice a week, something after the same plan as that adopted at the London or country clearing house with respect to cheques.

This is a great convenience to all parties, and has the same effect as the practice with respect to the clearing house, in lessening the amount of bank notes or gold required for the circulation of the district; it also operates as a check to a redundancy of issues, by any particular bank, within the district.

The notes of such bankers as reside beyond the district, when they come into the hands of the bankers within the district, are not sent to the issuers of them, but are sent at once to London, for the purpose of being presented for payment to the bankers to whom they are addressed, or upon whom they are drawn.

Right of Setting Off Notes on Bankruptcy of Country Banks.—Under section 38 of the Bankruptcy Act, 1883, set off is not allowed where the person claiming the right had, at the time of giving credit, notice of an act of bankruptcy committed by the debtor and available against him. But mere knowledge of insolvency is not equivalent to notice of an act of bankruptcy; and it has been held in an action brought by the assignees of certain bankers, that a party had a right to set off notes of such bankers taken by him after he knew they had stopped payment; but before he knew that they had committed an act of bankruptcy.(b) A right of set off when once it exists cannot be defeated by unfair means thus:—

(a) *Williams* v. *Smith*, 2 B. & A. 496. See further as to notice of dishonour, *ante*, p. 150.

(b) *Hawkins* v. *Whitten*, 10 B. & C. 217; *Dickson* v. *Cass*, 1 B. & Ad. 343; *Ex parte Reid*, 14 Q. B. D. 963.

Where one of two country banks became bankrupt, each at that moment having in their hands bank notes of the other, which, together with other securities, were reciprocally of nearly the same amount, and the assignee of the bankrupt house, knowing this, presented the notes, and obtained payment of them from the solvent bank at their London agents, who were unaware of the relative situation of the two banks, the money was held to be recoverable by the solvent bankers from the assignee, it being shown that, on the balance of accounts between the bankers, not only was nothing owing by the solvent bank, but that there was a sum of 22*l.* in their favour.(*c*)

Alteration of Note.—By section 64 of the Bills of Exchange Act, 1882, a material alteration in a bill without the assent of all parties liable thereon avoids such bill, except as against a party who has himself made, authorised, or assented to the alteration and subsequent indorsers; provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill, as if it had not been altered, and may enforce payment of it according to its original tenor.

And by sub-section (2) it is enacted that in particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment, without the acceptor's assent.(*d*)

The question of the application of this section (coupled with section 89 by which the provisions of the Act relating to bills apply "with the necessary modifications" to pro-

(*c*) *Edmeads* v. *Newman*, 1 B. & C. 418. In the case of a winding-up order the date of the order fixes the right to set off: *In re Milan Tramways Company*, 25 Ch. D. 591; *In re United Ports General Insurance Company*, 46 L. J. Ch. 403.

(*d*) See *ante*, p. 102.

missory notes) to Bank of England notes came before the courts shortly after the passing of the Act in the case of *Leeds Banking Company* v. *Walker*.(*a*) In that case the facts were as follows :—

A Bank of England note, which had been materially altered in number and date, was paid to the plaintiffs' bank for value by the defendant, both parties believing the note to be good. The plaintiffs paid away the note, which was afterwards presented to the Bank of England, where the alteration was perceived and payment was refused. The note was returned to the plaintiffs as a bad one, and, after a fortnight spent in tracing the note to the defendant, the plaintiffs demanded payment of it from him, and on the 21st July, 1882, sued him for the amount.

On the 18th August, 1882, the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), received the Royal assent.

Held, that the doctrine as to notice of infirmity in bills and notes was inapplicable to a forged Bank of England note, and that the delay in giving notice of the alteration to the defendant was no ground of defence; that before the Bills of Exchange Act, 1882, the Bank of England was not liable on the altered note (*Suffell* v. *Bank of England*, 9 Q. B. D. 555), which was therefore worthless; that section 64 was not retrospective, and that even if it were so, the "necessary modifications" referred to in section 89 would exclude Bank of England notes altogether from the operation of section 64, and that even if the proviso of section 64 would otherwise have affected the altered bank note, the alteration was "apparent," as the Bank of England could at once discern and point out to the holder of the note that it had been materially altered, although the alteration was not obvious to everybody; and, consequently, that the plaintiffs, having received from the defendant a worthless note on which no one could be sued, were entitled to recover in the action for money had and received.

(*a*) 11 Q. B. D. 84.

It will be noticed that sub-section (2) does not specifically mention the alteration of the number on a Bank of England note as being a material alteration, but it is submitted on the grounds mentioned in the above case and in *Suffell* v. *Bank of England*(b) that it clearly remains so.

Stolen Notes.—Bank of England or other notes cannot be followed by the legal owner into the hands of a *bonâ fide* holder for value without notice; and the holder of a note is, *primâ facie*, entitled to prompt payment of it, and cannot be affected by the previous fraud of any former holder in obtaining it. Payment, therefore, cannot be refused, when the note is presented, unless the bank can show that the holder was privy to the fraud.(c)

The bank is in the practice of stopping the payment of a note on receiving notice that it has been stolen, upon receiving an indemnity from the applicant; and this has been declared to be a reasonable practice.(d) The stopping payment does not appear to be a duty, but is merely an accommodation rendered to the public.(e)

A money changer, changing a Bank of England note, which had been stolen, but giving full value for it, and taking it *bonâ fide*, not having at the time knowledge that it had been stolen, was held entitled to recover from the bank the amount of the note, *although he had the means of knowledge* if he had taken proper care of certain notices, advertising its robbery, which had been previously delivered to him.

The money changer carried on business in Paris; he had received, some time before the transaction, a printed advertisement, stating the note to have been stolen, among others, from Messrs. A., in England; he nevertheless changed it *bonâ fide* about the middle of the year next

(b) 9 Q. B. D. 555; 51 L. J. 401.
(c) *Solomons* v. *Bank of England*, 13 East, 135 n.
(d) *Miller* v. *Race*, 1 Burr. 460; see *Willis* v. *Bank of England*, 4 A. & E. 36.
(e) *Ibid.*

following that in the course of which he had received the notice: it was held that he was entitled to recover from the bank the amount of the note.(*a*)

A Bank of England note, which had been feloniously stolen in England in February, 1826, was remitted in May, 1827, by a foreign merchant to his correspondent in this country, to whom he was indebted in a sum exceeding the amount of the note. The latter demanded payment; the bank refused to pay, on the ground that the note had been stolen. At the time when the correspondent was informed of this, he had not made the foreign merchant any advance on the credit of the note:—Held, first, that, in trover for the note, the correspondent must be considered the agent of the foreign merchant, and that he could, therefore, recover upon his title only; secondly, that, in such action, it having been proved that the note had been stolen, it was incumbent on the plaintiff to shew that the foreign merchant had given full value for it.(*b*)

Half Notes.—The practice of cutting notes in half for the purposes of transmission by post is a legal one.(*c*)

The property in the halves of bank notes sent in payment of a debt due to the receiver from a third person, with an intention on the part of both sender and receiver that the other halves are to follow, remains in the sender until he sends the second halves; the payment being until then inchoate and conditional. It is, therefore, open to the sender, at any time before sending the second halves, to disaffirm the transaction, and re-demand the first halves from the receiver, who is liable to an action for refusing to return them.(*d*)

(*a*) *Raphael* v. *Bank of England*, 25 L. J. C. P. 33; 17 C. B. 161. See also *Willis* v. *Bank of England*, 4 A. & E. 21; *Bank of Bengal* v. *Fagan*, 7 Moore, P. C. 72. See further as to the effect of negligence of holder, *ante*, p. 85.

(*b*) *De la Chaumette* v. *Bank of England*, 9 B. & C. 208.

(*c*) *Redmayne* v. *Burton*, 9 Jur. 21. A person may be indicted for stealing or embezzling the halves of bank notes. *Rex* v. *Mead*, 4 C. P. 535.

(*d*) *Smith* v. *Mundy*, 3 El. & El. 22; 29 L. J. Q. B. 172; 6 Jur. (N.S.) 977; 2 L. T. 373; 8 W. R. 561.

Section 69 of the Bills of Exchange Act, 1882, dealing with lost instruments, it is submitted, applies equally to the case of half notes;(e) indeed, it has been said that the banker would be even bound to pay without an indemnity.(f)

Notes Lost in Post.—If a note is sent to a creditor by post and lost, the loss falls upon the creditor, provided he has authorised it being so sent, or that mode of transmission is the one usually adopted between him and his debtor.(g) No action in respect of such a loss lies against the Postmaster-General,(h) though a deputy postmaster may be liable for negligently failing to deliver letters.(i)

Lost Notes.—Notice has previously been called to the provisions in the Bills of Exchange Act, 1882, relating to actions upon destroyed or lost negotiable instruments.(k) It has been held that bank notes come within these provisions.(l)

Rights of Finder.—Where A. had picked up some bank notes on the floor of B.'s shop, and handed them over to B. (who was not aware of the notes having been on the floor) to keep till the owner should appear, and B. caused advertisements to be inserted in various newspapers, but no one appeared to claim them, and three years elapsed, and then A. requested B. to return them, tendering the costs of the advertising, and offering an indemnity, and B. refused: A. was held entitled to recover the notes in trover against B.(m)

It is very important, in the case of a loss of bank notes, to bear in mind the general principle governing the criminal liability of the person finding them. The result

(e) See *Redmayne* v. *Burton*, *supra*.
(f) Per WILLES, J., in *Redmayne* v. *Burton*, *supra*.
(g) *Warwick* v. *Noakes*, 1 Peak. 98; *Norman* v. *Ricketts*, 2 "Times" Rep. 607.
(h) *Whitfield* v. *Lord De Spencer*, Cowper, 754.
(i) *Lane* v. *Cotton*, 1 Salk. 17.
(k) See *ante*, p. 88.
(l) *McDonnell* v. *Murray*, 9 Ir. C. L. R. 466.
(m) *Bridges* v. *Hawkesworth*, 21 L. J. Q. B. 76; 15 Jur. 1079; see *Armory* v. *Delamirie*, Sm. Leading Cas., vol. i.

of the authorities seems to be that, if the finder *believe at the time of finding them that the owner cannot be found,* he is not guilty of larceny, although he takes the notes intending to deprive the owner of them, and although he afterwards has means of finding the owner, and, nevertheless, retains the property to his own use.(*a*)

Operation of the Statute of Limitations on Bank Notes.— The notes of the Bank of England until paid by the bank are not, like a promissory note of a private person payable on demand, affected by the Statute of Limitations,(*b*) notwithstanding the notes may not be presented for payment, or payment be not made for very many years after their issue, for they form part of the established currency of the country.(*c*) With regard to country and other bank notes of banks having authority to issue them, a similar principle governs the law of their circulation and currency. By the Acts regulating the issue of bank notes in Ireland(*d*) and in Scotland,(*e*) it is expressly enacted, "that all bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker or some servant or agent of such banker." The 7 & 8 Vict. c. 32, which regulates the issue of bank notes in England, does not contain this provision; but, as we have seen, the 17 & 18 Vict. c. 83, after specifically defining (section 11)(*f*) what shall be deemed bank notes within these Acts for the purposes of issue and stamping, enacts (section 12), "that all clauses, provisions, regulations, &c.,

(*a*) *R.* v. *Clyde*, L. R. 1 C. C. R. 139; 37 L. J. M. C. 107; *Reg.* v. *Dixon*, 25 L. J. M. C.; 39 *Reg.* v. *Thurborn*, 1 Den. C. C. 388, 395, 396; *Reg.* v. *Moore*, 30 L. J. M. C. 77.

(*b*) *Norton* v. *Ellam*, 2 M. & W. 461. The statute runs from the date of the note in such case, although no demand is ever made.

(*c*) As to the mode of dealing with Bank of England notes that have been issued for over forty years, and have not been presented for payment, see 55 & 56 Vict. c. 48, s. 6. See also Appendix.

(*d*) 8 & 9 Vict. c. 37, s. 17.

(*e*) 8 & 9 Vict. c. 38, s. 8.

(*f*) *Ante*, p. 345. These Acts are in the Appendix.

contained in any Act or Acts, relating to the issue of such notes," &c. (and, of course, including the above-mentioned Acts), "shall be deemed to apply to all such notes;" and consequently it follows, as a necessary consequence, that until they are returned to, or paid, cancelled, or redeemed by, the banker issuing them, mere lapse of time does not affect their circulation or value any more than it does Bank of England notes.(*g*)

Forgery.—As regards forging and passing bank notes, knowing them to be forged, it is enacted by 24 & 25 Vict. c. 98, s. 12, that whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any note, or bill of exchange, of the Bank of England, or of Ireland, or of any other body corporate, company, or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on, or assignment of any bank note, bank bill of exchange, or bank post bill, with intent to defraud, shall be guilty of felony.

A *conditional* uttering partakes of the criminal qualities of any other uttering; thus, where a person gave a forged acceptance, knowing it to be so, to the manager

(*g*) Mr. Morse, in his "Treatise on Banks and Banking," put the non-liability of bank notes to the operation of the Statute of Limitations on a higher and different principle. He says, pp. 403, 404: "A bank note is not subject to the running of the Statute of Limitations, as any other simple indebtedness, or promise to pay, would be, although the bill is not distinguishable in form from such a promise. Its purpose of circulation necessarily involves this result. Every time that it is re-issued by the bank the promise is renewed, and it must usually be impossible in the case of any particular bill to say how often it has passed into, and again has been paid out by, the bank, or when it was last so paid out. But even if in any individual case it could be shown that the last issue was at a time so long past that the period of the statute has since elapsed, yet another objection, which goes to the root of the matter, still remains behind. For lapse of time, in the case of these instruments, affords no presumption of their having been paid. On the contrary, their existence in other hands than those of the bank, is at least *primâ facie* evidence of non-payment, since they are never paid, and, generally speaking, payment can never be enforced upon them at law, unless they are surrendered to the promisor. Further, as already shown, a new contract and a new cause of action is created by each transfer, so that the statute could begin to run only from the time when the last holder came into possession."

of a bank, where he kept an account, saying he hoped this bill would satisfy the bank as a security for the balance he owed them ; this was holden a sufficient guilty uttering.(*a*)

When the authority of a banking company to draw and issue notes is recognized by statute, it is not necessary to prove it by the charter or otherwise.(*b*)

On an indictment for disposing and putting off forged bank notes, knowing them to be forged, the prosecutor has a right to give in evidence the fact of other forged notes having been uttered by the prisoner, for the purpose of proving his knowledge of the notes in question being forged also ;(*c*) and delivering to another person a forged bank note, to be put off or passed by the latter, is a "disposing of and putting off" within the statute.(*d*)

Purchasing or receiving forged bank notes, knowing them to be so, is felony.(*e*)

Engraving Plates for Bank Notes.—It is also felony to engrave plates for the notes of the Bank of England or of Ireland, or of bankers, or to manufacture or sell paper resembling the paper used by the Bank of England or of Ireland for their notes or bills, or their watermarks, without authority.(*f*)

Larceny.—As regards the stealing of bank notes, where a person intercepts notes at a post office, which are in course of transmission from one branch of a banking company to another (at which they had been issued), he may be found guilty of the larceny of the notes described as money, though they were not in circulation at the time.(*g*)

(*a*) *Reg.* v. *Cooke*, 8 C. & P. 582.
(*b*) *Rex* v. *M'Keay*, 1 Mood. C. C. 130.
(*c*) *Rex* v. *Wylie*, 1 N. R. 92 ; *R.* v. *Millard*, R. & R. 245.
(*d*) *Rex* v. *Palmer*, 1 N. R. 96. See *R.* v. *Giles*, 1 Moo. C. C. 166.
(*e*) 24 & 25 Vict. c. 98, s. 13.
(*f*) *Ibid.* ss. 14—18.
(*g*) *Reg.* v. *West*, 26 L. J. M. C. 6 ; 7 Cox C. C. 183.

Obtaining Money or Goods by means of forged or worthless Notes.—If a person gives forged country bank notes in payment for goods, knowing them at the time to be valueless, he is indictable for cheating and defrauding the seller of the goods; but the evidence to show the notes to be bad and worthless must be clear and full. In a case where there was some evidence to show that the bank, of which the paper in question purported to be the notes, had stopped seven years previously, and the notes appeared to have been exhibited under a commission of bankruptcy against that bank, and the words importing the memorandum of exhibit had been attempted to be obliterated, but the names of the commissioners remained on each of them, and the notes had never been presented for payment at the bank, or at Sir J. Esdaile's, in London, where they were made payable, the judges held the evidence insufficient to show the notes to be bad.(*h*)

So, it is not sufficient to show the bankruptcy of two out of three partners in a bank, and the shutting up of the house; for the third being solvent, the note, if presented to him, may perhaps be paid.(*i*) So, even where the bank had ceased business twenty years previously, and the note uttered was old, discoloured, and dated many years before the time of giving it, and had been regularly cancelled and withdrawn from circulation, the makers having traced a large cross over the face of it, but the proceedings in bankruptcy against the bankers were not produced, it was held that the prisoner, though he gave a false address when asked, could not be convicted of a false pretence, as there was no evidence of his knowing the note to be cancelled and unavailable at the time he uttered it.(*k*)

A person passing a note of a country bank for 5*l.*, payable on demand, as a good note, and as of the value of 5*l.*, knowing at the time that the bank is insolvent and has

(*h*) *Rex* v. *Flint*, R. & R. 460.
(*i*) *Rex* v. *Spenser*, 3 C. & P. 420.
(*k*) *Reg.* v. *Clark*, 2 Dick Q. S., by Talfourd, 315.

stopped payment and cannot pay the note in full, may be indicted for obtaining money by false pretences.(*a*)

A person fraudulently offered a 1*l*. Irish bank note as a note for 5*l*., and obtained change as for a 5*l*. note; though the prosecutor could read, and the note upon its face clearly afforded the means of detecting the fraud, it was held, that this was obtaining money by means of false pretences.(*b*)

It is now a felony for any one, with intent to defraud, to demand, receive, or obtain, or procure to be delivered or paid to any person, or to endeavour to receive or obtain, or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under or by virtue of any forged instrument, knowing the same to be forged.(*c*)

(*a*) *Reg.* v. *Evans*, 29 L. J. M. C. 20.
(*b*) *Reg.* v. *Jessop*, 27 L. J. M. C. 70. See also *R.* v. *Woolley*, 1 Den. C. C. 559.
(*c*) 24 & 25 Vict. c. 98, s. 38.

CHAPTER XL.

BANK POST BILLS.

QUESTIONS often arise respecting bank post bills in the course of the business of bankers; we will, therefore, devote a word or two to the subject.

Bank post bills are instruments in common use among bankers for the remittance of money to persons in the country or abroad. They are payable to order, and at a certain number of days after sight.(*d*) When indorsed by the payee they become payable to bearer, and are negotiable as other bills or notes, until ultimately paid by the bankers issuing them. The peculiar quality of a bank post bill is its safety and facility as a medium of transmitting money to a distance.

Bank post bills issued in London by the Bank of England are not by law payable at the branches in the country; but they are usually cashed at the branches, or by bankers, for a commission.(*e*) By 9 Geo. 4, c. 81, bankers in Ireland are prohibited issuing or re-issuing bank notes, or bank post bills, without their being made payable at the places where issued, although they may be made payable at several places. By 5 Geo. 3, c. 49, s. 2, banks in Scotland may issue bank post bills payable seven days after sight, as in England.

Giving cash for a bank post bill is a payment within the protection clause of the Bankruptcy Act, 1883(*e*)

(*d*) See a form of a bank post bill, in *Willis* v. *Bank of England*, 4 A. & E. 22 n., and in *Forbes* v. *Marshall*, 11 Exch. 167; 24 L. J. Exch. 305. In the latter case, POLLOCK, C.B., ALDERSON, B., and PLATT, B., considered bank post bills to be bills of exchange, but MARTIN, B., however, thought them to be promissory notes. The Bank of England has issued bank post bills since the year 1738. See also *Block* v. *Bell*, 1 M. & R. 149. It is said that no "days of grace" are allowed on them. See "Byles on Bills," 109.

(*e*) See *Willis* v. *Bank of England*, 4 A. & E. 21.

(46 & 47 Vict. c. 52, s. 49), provided the payment to the bankrupt takes place before the date of the receiving order and the person by whom the payment was made had not at the time of the payment notice of any available act of bankruptcy committed by the bankrupt before that time.(*a*) Bank post bills are considered as ready money when unobjected to on the score of being drafts.(*b*)

(*a*) As to what is meant by an available act of bankruptcy, see section 168. Notice to the Bank of England is as against the bank notice to its branches, provided there has been a reasonable time allowed in which the head office could communicate with its branches. *Willis* v. *Bank of England*, *supra*.

(*b*) *Caine* v. *Coulton*, 1 H. & C. 764; *Tiley* v. *Courtier*, 2 C. & J. 16.

CHAPTER XLI.

EXCHEQUER BILLS AND BONDS.

It may be useful to refer to the law regulating the issue and currency of Exchequer Bills.(c) We have seen that they are negotiable instruments, payable to bearer, and pass by delivery. They may, however, be made payable to order, by filling in the blank with the name of the payee, in which case they are only transferable by his indorsement.(d) They are subject to the general lien of bankers, unless deposited by a customer with his bankers for a special purpose, as, for instance, to get the interest upon them, or to exchange them for new bills.(e) If bankers make advances on a deposit of Exchequer Bills, which turn out to be forgeries, they will be entitled to recover back their advances immediately upon the bills being repudiated at the Exchequer.(f)

The bills are issued under the direct authority of Parliament, for money advanced for the use of the Government, in anticipation of the receipt of the ordinary revenue, and are made a specific charge upon the Consolidated Fund of the United Kingdom or its growing

(c) The 29 & 30 Vict. c. 25; 38 & 39 Vict. c. 45; 40 Vict. c. 2, are the statutes which regulate the issuing and paying off Exchequer Bills since the 1st of April, 1867. The former statutes were the 48 Geo. 3, c. 1; 4 & 5 Will. 4, c. 15; 5 & 6 Vict. c. 66; 24 Vict. c. 5; and 25 Vict. c. 3, as to the bills issued before that period.

(d) *Wookey* v. *Pole*, 4 B. & Ald. 1.

(e) *Brandao* v. *Barnett*, 12 Cl. & F. 787; *ante*, p. 248.

(f) *Bank of England* v. *Tomkins*, 6 Jurist, 348. On the discovery of the extensive forgeries of Exchequer Bills, which were committed by Beaumont Smith, a clerk in the Exchequer Office, in the year 1842, a Commission of Inquiry was directed by the 5 & 6 Vict. c. 11, to issue, with instructions to the Commissioners to report upon the circumstances under which the bills had been issued, and the holders became possessed of them. Afterwards the Treasury was authorised by the 6 & 7 Vict. c. 1, to pay the *bonâ fide* holders of these forged documents.

produce.(*a*) Cash under the control of the Court of Chancery may be invested in Exchequer Bills.(*b*) They are receivable in payment of Government taxes or duties.(*c*)

The bills are prepared and made out at the receipt of the Exchequer, and may be in such form, with coupons for interest, as the Commissioners of the Treasury may think most safe and convenient, and may contain one common sum or different sums for the principal moneys.(*d*) They must, however, bear the name of one of the Secretaries for the time being to the Treasury, and that name may be impressed or affixed by machinery or otherwise in such manner as the Commissioners of the Treasury from time to time direct by regulations to be laid before both Houses of Parliament.(*e*)

The rate of interest varies, but it cannot exceed at any time 5*l*. 10*s*. per cent. per annum, and is payable half-yearly at the Bank of England.(*f*)

Fractions of a penny for interest are not allowed.(*g*)

Before current bills can be paid off, notice must be given in the *London Gazette*.(*h*)

Bills defaced by accident may be renewed.(*i*) With regard to the recovery or replacement of lost or destroyed bills, it is specially provided,(*k*) that, on proof by oath being made before the Lord Chief Baron, or other Baron of the Court of Exchequer,(*l*) that an Exchequer Bill has by casualty or mischance been lost, burnt, or otherwise destroyed, before being paid off or discharged, and the number and amount being ascertained, and the Chief or other Baron certifying that he is satisfied with the suffi-

(*a*) 29 & 30 Vict. c. 25, s. 7.
(*b*) Can. Ord., March, 1861, 7 Jur. (N.S.) 58, Part I.
(*c*) 29 Vict. c. 25, ss. 9—11. See 40 Vict. c. 2, s. 6.
(*d*) *Ibid.* s. 3.
(*e*) 52 Vict. c. 6, s. 5.
(*f*) 29 Vict. c. 25, s. 5.
(*g*) *Ibid.* s. 17.
(*h*) *Ibid.* s. 8.
(*i*) *Ibid.* s. 14. A similar provision was contained in the 48 Geo. 3, c. 1, s. 18, and in 24 Vict. c. 5, s. 12.
(*k*) *Ibid.* s. 16.
(*l*) Now it is submitted by the Lord Chief Justice (Judicature Act, 1881, s. 252), or a judge of the Queen's Bench Division. See also 56 Vict. c. 14.

ciency of the proof, the Commissioners of the Treasury are authorised to pay the bill and interest. But security is to be given to repay the money, in case the bill should be afterwards produced.(*l*)

Forging or counterfeiting an Exchequer Bill or a coupon, or an indorsement, or tendering a forged bill in payment of a debt, is felony.(*m*) So is the manufacturing of paper, plates, or dies in imitation of those in use for Exchequer Bills.(*n*) Having the possession of such paper, plates, or dies unlawfully is a misdemeanor.(*o*) An Exchequer Bill or bond is the subject of larceny, as being a valuable security for the payment of money.(*p*)

The 29 & 30 Vict. c. 25, s. 30, authorises the issue of Exchequer bonds for advances made by the Bank of England to Her Majesty.

(*l*) 29 & 30 Vict. c. 25, s. 16.
(*m*) *Ibid.* s. 15; 24 & 25 Vict. c. 98, s. 8.
(*n*) *Ibid.* s. 20; *Ibid.* s. 10.
(*o*) *Ibid.* s. 21; *Ibid.* s. 11.
(*p*) 24 & 25 Vict. c. 96, s. 1.

CHAPTER XLII.

REMITTANCES.

As regards questions respecting the transmission of money, by the intervention of bankers, from one part of England to another, many points have been noticed, arising in cases which have been referred to principally for other purposes, and will be found in parts of the work where discounts, commission, and the relations between banks in one town, and their branches, or correspondents in London or elsewhere, are stated.

A. & Co., in America, remitted to B. & Co., in Liverpool, bills of exchange, for the purpose of taking up other bills of nearly the same amount which were maturing and payable at Liverpool. A. was a partner with B. at Liverpool, but in a totally different partnership. B. had deposited these bills with a Liverpool bank, to meet advances which the bank had made for the firm of B. & Co., and he did not appropriate the proceeds as directed by A. & Co. It was held, that the holders of the bills, to take up which the second set had been transmitted to England, were entitled to recover as against the bank the amount of the proceeds of such bills, the bank having had notice of such intended appropriation.(*a*)

A merchant purchased from the New Orleans Bank a bill drawn by them upon the Bank of Liverpool, and was informed by the persons representing the New Orleans Bank at the time of the purchase that the Liverpool Bank had, or would have, funds of the New Orleans Bank sufficient and applicable to meet the bill, and appropriated for the purpose. Before the bill was presented for acceptance

(*a*) *Thayer* v. *Lister*, 30 L. J. Ch. 427.

the New Orleans Bank stopped payment, and the Liverpool Bank declined to accept the bill on presentation, or to pay it at maturity, on the ground that though they had in their hands sufficient funds of the New Orleans Bank to meet the bill, none of such funds were specifically appropriated to the payment of it. The course of business between the two banks was for the Orleans Bank to remit to the Liverpool Bank bills for collection, and to draw bills against the remittances, taking care to keep them always in funds to meet the bills drawn upon them. The Court held that there was no specific appropriation of the funds of the New Orleans Bank in the hands of the Bank of Liverpool to meet the bill, and that the statement made to the purchaser of the bill amounted to no more than a representation of the course of business of dealing between the two banks, and did not create any equitable lien on the funds in his favour.(*b*)

Bankers at Lima established a credit agency with the General Company in London, and agreed to send remittances within ninety days to cover drafts. The General Company, being in difficulties, obtained an advance of money from the Peruvian Bank, to be repaid out of expected remittances from the Lima Bank to cover bills then current, and the Peruvian Bank employed as agents to receive and to select from the expected securities, the managing director of the General Company and their own managing director, who had been two years previously the manager of the General Company, and was cognisant of and party to the arrangement with the Lima Bank. The securities were selected by, and handed over to, the Peruvian Bank upon their arrival, and the following day the General Company stopped payment and was wound up:—Held, that the Lima Bank had no title to recover the securities from the Peruvian Bank.(*c*)

(*b*) *Thompson* v. *Simpson*, 39 L. J. Ch. 857; L. R. 5 Ch. 659.
(*c*) *Banco de Lima* v. *Anglo-Peruvian Bank*, 8 Ch. D. 160; 38 L. T. 130.

Where a debtor remits to his creditor a bank note or a bill of exchange, by a mode of conveyance directed by the creditor; or if he transmits by the post, as being the usual mode of transmission, in the absence of orders from the creditor prescribing the mode, and the bill or note is lost or stolen, the loss falls upon the creditor.(*a*)

Foreign.—With respect to the transmission of money between England and foreign countries, it may be desirable to notice some of the decisions, especially as regards the subject of the course of exchange.

A., in London, drew a bill on B., in Paris, which, having been negotiated through Amsterdam, was presented for acceptance to B., who refused to accept it, but promised that the bill should be paid at maturity. Before, however, the bill was due, the French Government prohibited the payment of any bills drawn in countries at war with France, which Great Britain was at that time, and on that account the bill was not paid by B. Under these circumstances A. was held liable to the payees, not merely for the whole value that he originally had received for the bill, with interest, and the expenses of protesting, but for the amount of the re-exchange, by the circuitous course of Amsterdam, that being a consequence of the bill not having been paid.(*b*)

When a bill drawn and indorsed in England, and payable abroad, is dishonoured by the acceptor's non-payment, the holder is entitled as against the drawer to the amount of the re-exchange, that is, the value at the rate of exchange on the day of the dishonour of the sum expressed on the face of the bill, in the currency of the country where it is payable, with interest and expenses.(*c*)

The acceptor of a bill is, it is submitted, liable for re-exchange.(*d*)

(*a*) *Warwick* v. *Noakes*, Peake, 67.
(*b*) *Mellish* v. *Simeon*, 2 H. Bl. 378; and see *De Tastet* v. *Baring*, 11 East, 265.
(*c*) *Suse* v. *Pompe*, 8 C. B. (N.S.) 538; 30 L. J. C. P. 75.
(*d*) *In re General South American Company*, 7 Ch. D. 637; and see *Prehn* v. *Royal Bank of Liverpool*, L. R. 5 Ex. 92; *Ex parte Roberts*, 18 Q. B. D. 286; "Chalmers on Bills," 184.

CHAPTER XLIII.

JOINT STOCK BANKS.

IT now becomes necessary to state in what respects the Legislature has interfered, to qualify or regulate the general law with respect to bankers, in cases where a number of persons combine or unite for the purpose of carrying on a banking establishment.

By the 39 & 40 Geo. 3, c. 28, s. 15, as has been previously stated,(*e*) it was forbidden to establish any corporate bank whatever, or any bank where the number of bankers in partnership should exceed six, so as "to borrow, owe, or take up any sum or sums of money, on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof," during the continuance of the privileges secured to the Bank of England, by former Acts of Parliament.

And again by the 7 Geo. 4, c. 46, the formation under deeds of settlement of banking copartnerships consisting of more than six persons was only permitted provided they did not carry on business within the distance of sixty-five miles from London, and had not any of their banking establishments in London. Every member was also responsible for the payment of all bills and notes issued, and for all sums of money borrowed, owed, or taken up, by the copartnership. These restrictions and conditions were imposed by the first section of the Act.

How these two statutes became in course of time modified by subsequent Acts, and how far banks can at the present day issue notes payable on demand, has been already considered at some length.(*f*)

(*e*) *Ante*, p. 393.
(*f*) *Ibid.*

Return or Account of Names of Members and Public Officers.—Another restriction on banking partnerships is imposed by the 7 Geo. 4, c. 46, s. 4, with respect to the returns such partnerships are bound to make :—

Before any such corporation or copartnership, exceeding the number of six persons in England, shall begin to issue any bills or notes, or borrow, owe, or take up any money on their bills or notes, an account or return shall be made out, according to the form contained in the Schedule marked (A.), wherein shall be set forth the true names, title or firm of such intended or existing corporation or copartnership. and also the names and places of abode of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons, being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers(*a*) of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued, as hereinafter provided.(*b*) and also the name of every town and place where any of the bills or notes of such corporation, or copartnership shall be issued by any such corporation, or by their agent or agents; and every such amount (*quære* "account") or return shall be delivered to the Commissioners of Stamps, at the Stamp Office in London,(*c*) who shall cause the same to be filed and kept in the said Stamp Office, and an entry and registry thereof, to be made in a book or books, to be there kept for that purpose, by some person or persons to be appointed by the said commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of one shilling for every search.

This section has become immaterial in one respect, viz., as regards that part of it which makes compliance with it a condition precedent to the power of issuing notes,

(*a*) Where a person has once been appointed to the office he is presumed to continue in it until the contrary is shown. *Steward* v. *Dunn*, 12 M. & W. 655; *Steward* v. *Greaves*, 10 M. & W. 711.

(*b*) *I.e.*, by a public officer (section 9). See *post*, Chapter LII.

(*c*) Now Commissioners of Inland Revenue. See 12 & 13 Vict. c. 1, and 53 & 54 Vict. c. 21, s. 1 (1).

because, since the 19th of July, 1844, by the 7 & 8 Vict. c. 32, s. 10, no new bank can issue notes; but it is necessary to retain it in other respects, because as to them, it is still law. By section 5 such account or return shall be made out by the secretary or other person being one of the public officers appointed as aforesaid, and shall be verified by the oath of such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorised and empowered to administer, and such account or return shall between the 28th of February and the 25th of March in every year after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid, to the Commissioners of Stamps to be filed and kept in the manner and for the purposes as hereinbefore mentioned.(*d*)

A return or an account, omitting the words *justice of the peace* was held receivable in evidence, it being proved that the persons signing the verification was, in fact, a justice of the peace.(*e*)

A certified copy of the return is evidence of the facts pertinently stated in it; it is not necessary to prove that the affidavit verifying it was made by the public registered officer of the company.(*f*)

On the other hand, the return is not the only evidence of these facts, for they may be proved *aliunde*.(*g*) An annual general return for March, 1848, has been held admissible in evidence, to show a person to be a member on the 24th of January, 1848.(*h*)

Where certain proprietors of a company were sued upon a judgment against the public officer, the enumeration

(*d*) It does not seem *obligatory* to file the return within the specified period of the year. See *Steward* v. *Dunn*, 12 M. & W. 663, the above provision being probably only directory.

(*e*) *Bosanquet* v. *Woodward*, 5 Q. B. 310.

(*f*) *Ibid.* If it purports to be signed by the "cashier" it will suffice. *Harvey* v. *Scott*, 11 Q. B. 92, 102.

(*g*) *Edwards* v. *Buchanan*, 3 B. & Ad. 788; *Rex* v. *James*, 7 C. & P. 553; *Reg.* v. *Carter*, 1 Den. C. C. 65.

(*h*) *Bosanquet* v. *Shortridge*, 4 Ex. 699.

of proprietors in such a return, to the Stamp Office, was held not to be receivable in evidence against the plaintiff, to show that at the time they were not proprietors.(*a*)

The fact of the return having been made, is not a condition precedent to the public officer's right to sue on behalf of the company.(*b*)

The Commissioners of Stamps are directed, for a fee of ten shillings, to give certified copies of the returns or account (section 7).

An account of the names of persons appointed officers, persons ceasing to be members, of persons newly becoming members, &c., is to be made *from time to time*, as occasion requires (section 8).

By 7 & 8 Vict. c. 32, s. 21, every banker in England and Wales must, on the 1st of January in each year, or within fifteen days afterwards, make a return to the Commissioners of Stamps of his name, residence, and occupation, and in case of a company or copartnership, of the name, residence, and occupation of every member, with other particulars.

The Commissioners had also to publish such returns in certain newspapers, but by 43 & 44 Vict. c. 20, s. 57, it is enacted that Commissioners shall no longer be obliged to publish in any newspaper any return made to them by any banking company which is duly registered under 6 Geo. 4, c. 42 ; 7 Geo. 4, c. 46 ; 7 Geo. 4, c. 67 ; and the Companies Acts or any of them.

Contracts.—Copartnerships formed under 7 Geo. 4, c. 46, not being constituted corporations, contracts which they may enter into within the scope of their business do not require to be under seal, but may be signed or executed by their manager.(*c*)

(*a*) *Prescott* v. *Buffery*, 1 C. B. 41 ; *Harvey* v. *Scott*, 11 Q. B. 92.

(*b*) *Bonar* v. *Mitchell*, 5 Ex. 415 ; 19 L. J. Ex. 302, decided on similar provisions in the Scotch Banking Act (7 Geo. 4, c. 67).

(*c*) In *Swift* v. *Winterbotham* (L. R. 8 Q. B. 244, 250), Mr. Justice Quain, in delivering the considered judgment of the Court, made the following observations upon the constitution and character of one of these

Actions and Suits.—No more than one action or suit for the recovery of one and the same demand can be brought against these copartnerships, in case the merits have been tried in such action or suit.(*d*)

The mode prescribed by 7 Geo. 4, c. 46, s. 9, for these copartnerships to sue and to be sued, is by a public officer, and being applicable to other banking companies by subsequent legislation, it will be more useful to consider the whole subject under one title.(*e*)

Set-off between Copartnership and Members.—With respect to this right it is enacted,—(*f*)

That no claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus, payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which

banking copartnerships: "It appears that the Gloucestershire Banking Company is a copartnership, formed under 7 Geo. 4, c. 46, for the purpose of carrying on the business of bankers at places more than sixty-five miles from London. The company is not a corporation, and has, therefore, no common seal. It is a copartnership created by deed or articles of copartnership for a particular purpose, with certain statutable privileges. It can sue and be sued only in the name of one of its public officers, and in all litigious business the company is represented by one of its public officers who must be a member of the company; and individual members cannot be sued in respect of transactions with the company till a judgment or decree has been first obtained against the company through one of its public officers. In *Powles* v. *Page* (3 C. B. 16), a company established under this Act was considered a quasi-corporate body, so as not to be affected by what may have been known to any individual member.

"The Act contains no provision as to the manner in which the company shall make or sign deeds, contracts, or documents of any description. It confers no authority on the public officer to bind the company, but makes him the representative of the bank only for litigious purposes; and although he must be a member of the company, he may have nothing to do with the management of its affairs. It seems obvious, therefore, from the nature of its constitution as a fluctuating and numerous body, that the company cannot affix its signature to documents otherwise than by the hand of some individual or individuals who, by the articles of copartnership, are appointed to represent the general body in such matters." The Court of Appeal, however, held in this case *sub. nom. Swift* v. *Jewsbury* (L. R. 9 Q. B. 301), that the signature of the manager was not sufficient to bind the bank under section 6 of 9 Geo. 4, c. 14. See further, *post*, Chapter LI.

(*d*) 7 Geo. 4, c. 46, s. 10, and 1 & 2 Vict. c. 96, s. 2, made perpetual by 5 & 6 Vict. c. 85.

(*e*) See *post*, Chapter LII.

(*f*) 1 & 2 Vict. c. 96, s. 4, continued by 2 & 3 Vict. c. 68, and 3 & 4 Vict. c. 111, and afterwards made perpetual by 5 & 6 Vict. c. 85.

such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus, payable or apportionable in respect thereof.

Where a member of a banking copartnership kept an account with them as his bankers, and became bankrupt, indebted to the bank on the account, the company, being largely indebted to other persons, has a right of proof against the bankrupt in respect of the balance due to them on his account.(*a*)

Effect of Judgments, Decrees and Orders.—Then there is a provision, that decrees in equity, made or obtained against the public officer, shall take effect against the company,(*b*) and so with respect to judgments in actions.(*b*)

The 7 Geo. 4, c. 46, s. 13, provides a mode of realising the fruits of a judgment obtained against the public officer, in case there are no partnership assets to meet it, by an exhaustive process of execution against members, either collectively or individually. This process is by issuing a writ of *scire facias*, by leave of the Court in which the judgment is obtained, in order to make them parties to the judgment, and so liable to execution.(*c*)

This mode of proceeding, however, against members, when execution against the public officer proves to be fruitless or ineffectual, would seem to have been entirely superseded by the power given to a company, unable to meet its liabilities, or to creditors whose claims are unsatisfied, of obtaining a winding-up order under the Companies Act of 1862, and thus to stay all legal proceedings

(*a*) *Ex parte Davidson*, 2 M. D. & De G. 368.
(*b*) 7 Geo. 4, c. 46, ss. 11, 12.
(*c*) *Ransford* v. *Bosanquet*, 2 Q. B. 972; *Dodson* v. *Scott*, 2 Ex. 469; *Bank of England* v. *Johnson*, 3 Ex. 598; *Barker* v. *Buttress*, 7 Beav. 143.

against the company or its members.(d) The procedure by *scire facias* is therefore practically obsolete. It may be observed, that when execution issues upon a judgment against the public officer, no *scire facias* is necessary, as he is a party to the judgment and previously liable thereon.(e) Execution cannot issue against parties after they have ceased to be members for three years.(f) But members satifying an execution against them are entitled to reimbursement out of the funds of the copartnership, or to contribution from the other members, as in the case of an ordinary partnership.(g) The law applicable to the winding-up of banking copartnerships, and the liability of shareholders to contribution, will form the subject of a separate consideration.

Registering Judgments against Members.—If a judgment is recovered against the public officer, and it is sought to charge the real estate of a member of the copartnership at the date of the judgment, the Court has no jurisdiction over the senior master, to order him to receive the memorandum, in order to register the judgment pursuant to the 1 & 2 Vict. c. 110, s. 19, and 3 & 4 Vict. c. 82, s. 2. It is entirely in his discretion to receive the memorandum.(h)

Where, however, a creditor obtained a judgment against the official manager of a banking company, and registered the judgment against the real estate of a former shareholder without the leave of the Court, the Irish Court of Chancery gave relief against such registration and ordered it to be removed, as being a cloud on his title to his lands.(i) The registration of judgments or decrees in equity, in order to charge the lands of shareholders, will

(d) 25 & 26 Vict. c. 89, ss. 199, 201, and ss. 80, 87, 89.
(e) *Harwood* v. *Law*, 7 M. & W. 203.
(f) *Barker* v. *Buttress*, 7 Beav. 134.
(g) 7 Geo. 4, c. 46, s. 14.
(h) *Ex parte Ness*, 5 D. & L. 339; 5 C. B. 155; 2 & 3 Vict. c. 11, s. 8.
(i) *Hone* v. *O'Flaherty*, 9 Ir. Ch. Rep. 119, 497; see *Harris* v. *Royal British Bank*, 27 L. J. Ex. 1.

now be rarely resorted to, as the means of obtaining satisfaction of judgment debts will be more efficacious and expeditious under proceedings to wind up the company.

Such are the several provisions relating to the constitution and regulation of these copartnerships; and they are still in force as to all such copartnerships which have not registered themselves under the Joint Stock Banking Companies Act, 1857,(*a*) or under the Companies Act, 1862,(*b*) or have not obtained letters patent incorporating them under the 7 & 8 Vict. c. 113.

Joint Stock Banks under the 7 *&* 8 *Vict. c.* 113.—Banking copartnerships could not be formed by deeds of settlement, under the 7 Geo. 4, c. 46, after the 6th of May, 1844. The 7 & 8 Vict. c. 113, which was passed in the year 1844, for regulating joint stock banks in England, prohibited the formation of banking companies consisting of more than six persons, unless by virtue of letters patent granted according to its provisions.(*c*) It enabled banking companies of more than six persons, either formed or carrying on business before the 6th of May, 1844, to obtain letters patent incorporating them.(*d*) This Act was subsequently repealed, as we shall afterwards see, but it is necessary to refer to the provisions of the Act as governing the companies which may have been formed under it.

A body of persons intending to become a joint stock banking company under this Act petitioned the Queen in Council, according to a prescribed form;(*e*) and, on the report of the Board of Trade that the statutory requirements had been complied with, a charter was granted;(*f*)

(*a*) 20 & 21 Vict. c. 49.

(*b*) 25 & 26 Vict. c. 89. The 6 Geo. 4, c. 42, as to Irish banks, is still in force.

(*c*) See *Wigan* v. *Fowler*, 1 St. 459; *Perring* v. *Dunston*, Ry. & M. 426. The 9 & 10 Vict. c. 75, repealed by 20 & 21 Vict. c. 49, s. 12, and 25 & 26 Vict. c. 89, s. 205, was a similar enactment for the regulation of joint stock banks in Ireland and Scotland.

(*d*) 7 & 8 Vict. c. 113, s. 45,

(*e*) *Ibid.* s. 2.

(*f*) *Ibid.* s. 3.

a deed of settlement containing certain specified provisions,(g) which, however, have been materially altered in one respect by subsequent legislation, to be mentioned hereafter, so as to admit of the re-election of outgoing directors,(h) was then executed by the holders of at least one-half of the shares,(g) and the Queen by the letters patent incorporated the company,(i) but so that the liability of the shareholders was not limited,(k) and actions might be brought by or against the company, or shareholders, reciprocally,(l) every judgment, decree or order of any Court of justice against the company being enforceable against the company, and against shareholders and former shareholders,(m) and execution against the company, proving ineffectual, might be had against any shareholder, and if unproductive, then against any person who might be a shareholder at the time when the cause of action arose, with a limitation of three years after ceasing to be a shareholder;(n) such shareholder being entitled to reimbursement out of the effects of the company, or, in default, to contributions from the other shareholders.(o)

A creditor, having obtained a judgment against the company, was held entitled to proceed by *scire facias* on the judgment against the shareholders, and was not limited to the remedy given by execution.(p) The letters patent incorporate the body for the purposes of banking, and empower it to purchase and hold lands of such annual value as expressed in the letters patent; but these are granted for a term of years, not exceeding twenty years;(q) and the incorporation does not limit the liability of the shareholders, as before

(g) 7 & 8 Vict. c. 113, s. 4.
(h) See *infra*.
(i) 7 & 8 Vict. c. 113, s. 6.
(k) *Ibid*. s. 7.
(l) *Ibid*. s. 8.
(m) *Ibid*. s. 9.
(n) *Ibid*. s. 10.
(o) *Ibid*. ss. 11—15.
(p) *Cleve* v. *Harwar*, 6 H. & N. 22. See *Morrisse* v. *The Royal British Bank*, 1 C. B. (N.S.) 67.
(q) 7 & 8 Vict. c. 113, s. 6.

observed. Within three months after the grant of the letters patent, and before the company begins business, a memorial, setting forth the title or name of the company, the names and places of abode of all the members, and of the directors, managers and other like officers, and the names and place of every bank established by the company, and the name of every town or place where the business is to be carried on, is to be made out,(*a*)—this to be repeated every year between the 28th of February and the 25th of March, as long as they carry on business as bankers,—and delivered to the Stamp Office,(*b*) there to be filed, and an entry or a register made in a book is open to search for a fee of one shilling; and a printed list of the registered names and places of abode is to be made out from time to time and kept in a conspicuous place in the company's principal place of business;(*c*) a like memorial is to be made out from time to time, as occasion requires, and delivered to the above office, according to a prescribed form,(*d*) containing the above particulars of every new director, manager, or other like officer, and the names of all persons who have become members, either in addition to or instead of any former member, and the name of every new town in which the company carries on business, and the names of all who have ceased to be members; and such further account is to be filed and registered at the Stamp Office;(*b*) these memorials require to be signed by the manager, or one of the directors, and verified by his declaration before a magistrate,(*e*) and the persons whose names appear in the then last delivered memorial are from time to time the existing shareholders.(*f*)

Certified copies of these memorials, under the hand of the Commissioners of Stamps and Taxes, are receivable in

(*a*) 7 & 8 Vict. c. 113, Sched. A.
(*b*) Section 17 (now Inland Revenue Office). See *ante*, p. 374, n. (*c*)
(*c*) *Ibid.* s. 16.
(*d*) *Ibid.* Sched. B. 1.
(*e*) *Ibid.* s. 18.
(*f*) *Ibid.* s. 21.

evidence as proof of their contents,(*g*) and are obtainable on the payment of a fee of ten shillings.(*h*)

A shareholder, whose name is properly inserted in the last delivered memorial, remains liable to execution, although he has subsequently *bonâ fide* transferred his shares, and the transfer has been duly executed by the transferee and registered.(*i*) But if a shareholder dies before a judgment is obtained against the company, although his name appears in the memorial, which was existing at the time of his death, his executors could not be proceeded against by a judgment creditor.(*k*)

The Courts will not interfere with the company in the performance of the duty of making these returns, as regards the form in which they are made.

The capital stock of the company can in no case be less than 100,000*l.*; the means by which it is to be raised, the amount paid up at the date of the petition to the Queen for the grant of letters patent, and where and how such paid-up capital is at that date invested, must be set out in such petition.(*l*) Before a company commences business, one-half at least of the capital subscribed for is required to be fully paid up.(*m*) But the omission to comply with this provision does not render the company illegal or relieve the shareholders from the payment of its debts or liabilities.(*n*) In the petition to the Queen for the grant of letters patent, the persons proposing to become a banking company set out the proposed number of shares; the shares not to be less than 100*l.* each; the actual amount

(*g*) 7 & 8 Vict. c. 113, s. 19.
(*h*) *Ibid.* s. 20.
(*i*) *Fry* v. *Russell*, 3 C. B. (N.S.) 665; 27 L. J. C. P. 153. See *Dossett* v. *Harding*, 1 C. B. (N.S.) 524; *Daniell* v. *Royal British Bank*, 1 H. & N. 681.
(*k*) *Powis* v. *Butler*, 4 C. B. (N.S.) 469; 27 L. J. C. P. 249.
(*l*) 7 & 8 Vict. c. 113, s. 2.
(*m*) *Ibid.* s. 5.
(*n*) *In re London and Eastern Banking Corporation, Ex parte Longworth*, 1 De G., F. & J. 17; 29 L. J. Ch. 55.

of each of the shares into which the proposed capital stock is divided must also be stated.(*a*) The deed of partnership must contain also specific provisions for preventing the company from purchasing any shares, or making advances of money or securities for money, to any person on the security of a share or shares in the partnership business.(*b*) Subject to the regulations of the Act, and to the provisions of the deed of settlement, every shareholder may sell and transfer his shares by deed duly stamped, in which the consideration is to be truly stated, such deed to be according to a given form,(*c*) or to the like effect; such deed, after execution, to be delivered to the secretary of the company, to be kept by him, and a memorial thereof entered by him in the register of transfers; the entry is to be indorsed on the deed, at a fee for every such entry and indorsement, not exceeding 2*s.* 6*d.*, payable to the company. Until such transfer is delivered to the secretary, the buyer is not entitled to dividends, or to vote, in respect of such share.(*d*)

No share can be transferred until all calls, for the time being due on it, and every other share the owner of it held is paid.(*e*)

The register of transfers may be closed by the directors for not more than fourteen days previously to each ordinary meeting; they may fix a day for the closing, of which seven days' notice is to be given in the *London Gazette*:(*f*) any transfer made within such fourteen days is to be considered as being made subsequently to such ordinary meeting, as between the company and the transferee.(*g*)

(*a*) 7 & 8 Vict. c. 113, s. 2.
(*b*) *Ibid.* s. 4.
(*c*) *Ibid.* Sched. C.
(*d*) *Ibid.* s. 23.
(*e*) *Ibid.* s. 24.
(*f*) In section 25, the words used are "notice shall be given by advertisement in some newspaper as after mentioned," but the only newspaper mentioned subsequently is the *London Gazette* (section 38).
(*g*) 7 & 8 Vict. c. 113, s. 25.

When shares come to any one by the death, bankruptcy or insolvency of a shareholder, or by the marriage of a female shareholder, or by any other legal means than by the above mode of transfer, the claimant is not entitled to receive dividends, or to vote in respect of them, until such transmission of them is authenticated by a declaration in writing, stating the manner how, and to whom they pass, to be made and signed by a credible person before a magistrate.(*h*)

This declaration is to be left with the secretary, who thereupon is to enter the name of the person entitled on the register book of shareholders, at a fee not exceeding 2*s*. 6*d*., payable to the company.(*i*)

Where persons are jointly entitled to shares, all notices required to be given to shareholders must be given to the person whose name stands first in the register of shareholders, which is to be notice to all of them.(*k*)

When the shareholder is a minor, idiot, or lunatic, the receipt for any money payable to him of the guardian in case of a minor, of the committee in case of an idiot or lunatic, shall be sufficient.(*l*)

The company is not bound to regard trusts to which any shares may be subject.(*m*)

The receipt of the person in whose name a share stands in the books of the company discharges the company, in respect of any dividend or other sum payable in respect of such share, notwithstanding any trust attaching to the share.(*m*)

The liability of shareholders is unlimited ;(*n*) they may be sued by, and may sue, the company,(*o*) and judgment,

(*h*) 7 & 8 Vict. c. 113, s. 26. The directors may require such other form as they may think fit.

(*i*) *Ibid.* The transmission of shares by will, intestacy or on marriage of a female shareholder, is provided for by section 27.

(*k*) *Ibid.* s. 28.

(*l*) *Ibid.* s. 29.

(*m*) *Ibid.* s. 30.

(*n*) *Ibid.* s. 7.

(*o*) *Ibid.* ss. 8—10. See *post*, pp. 389, 390, as to this liability.

decrees and orders against the company may be under certain circumstances enforced against them individually, whether they are members at the time the cause of action accrues, or have been members within three years.(*a*)

A creditor cannot maintain an action against a shareholder for his debt, his remedy being against the company.(*b*)

From time to time the directors may make such calls on the shareholders, "in respect of the amount of capital stock respectively subscribed by them," as the directors shall think fit.(*c*) Whenever execution upon any judgment against the company shall have been taken out against any shareholder, the directors within twenty-one days next after notice served upon the company of the payment of any money by such shareholder, his executors or administrators, in or toward satisfaction of such judgment, shall make such calls upon all the shareholders as will be sufficient to reimburse such shareholder, his executors or administrators, and every shareholder must pay every call to the persons at the times and places from time to time appointed by the directors.(*d*)

Besides being liable to pay calls, shareholders may forfeit their shares by leaving calls unpaid, if the directors at any time after six calendar months from the day appointed for the payment of such calls declare them to be so forfeited; the shareholders still remaining liable for the calls due before the forfeiture.(*e*)

But in order to authorise the sale or forfeiture of such shares, the declaration must be confirmed at some general

(*a*) See last note.

(*b*) *Fell* v. *Burchett*, 7 El. & Bl. 537; 26 L. J. Q. B. 223.

(*c*) 7 & 8 Vict. c. 113, s. 31.

(*d*) *Ibid.* Interest at 5*l.* per *per cent. per annum* on calls unpaid is recoverable under section 32. And sections 33—35 provide for the enforcement and proof of calls in an action.

(*e*) 7 & 8 Vict. c. 113, s. 37. Notice of the intention to declare must be first served, section 38; if the address of the proprietor is not known, it must be published in the *London Gazette* (section 38).

meeting, held at least two calendar months from the day the notice of intention to declare was given.(*f*)

And on payment of the arrears of calls due on such shares and the interest and expenses being made before actual sale, they revert to the original owner.(*g*) The deed of partnership of every joint stock banking company under this statute, prepared according to a form approved of by the Board of Trade, in addition to any other provisions contained in it, must include specific provisions for the management of the affairs of the bank, and the election and qualification of directors.(*h*)

As regards re-election of retiring directors, no deed of settlement of any company, established since the 29th of July, 1856, under this statute, need contain any proviso for *preventing* the re-election of retiring directors, either absolutely or for any limited period; and, in every banking company, being at that date established under this Act, the directors retiring at any general meeting henceforth will be eligible for re-election, (if duly qualified in other respects,) notwithstanding the proviso in the 4th section, that the deed of partnership should contain a specific proviso for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors, for at least twelve calendar months: this proviso having been repealed by the 19 & 20 Vict. c. 100, ss. 1, 2.(*i*)

Any one of the directors is empowered to sign bills of exchange or promissory notes on behalf of the company, provided it is therein expressed to be made, accepted or indorsed by him on behalf of the company; and he is not to be liable on such bills or notes, otherwise than he would have been on any other contract, signed by him on behalf

(*f*) 7 & 8 Vict. c. 113, s. 39. Evidence of forfeiture, section 40. Title to such shares of buyer (section 40). By section 41, no more shares to be sold than sufficient to satisfy calls and costs.

(*g*) *Ibid.* s. 42.

(*h*) *Ibid.* s. 4.

(*i*) Section 1 is repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

of the company.(*a*) A manager, or other officer to perform the duties of a manager, must be appointed under this statute.(*b*)

The duties of the manager, who is not personally liable on contracts signed by him on behalf of the company, are the following only, as limited by the statute.

Bills of exchange or promissory notes on behalf of the company may be made, accepted or indorsed, in any manner specified in the deed of partnership, provided they are signed by the manager (or one of the directors), and by him expressed to be so on behalf of the company.(*a*) Service of notices, writs or other proceedings at law or in equity, or otherwise, on the manager or any director, by leaving them at the principal office of the company, or if the company has suspended or discontinued business, by serving personally the manager or director, or by leaving the same with some inmate at the usual or last abode of the manager, is good service on the company.(*c*) There must be holden once at least every year, at an appointed time and place, an ordinary general meeting of the company.(*b*)

Extraordinary general meetings must be held upon the requisition of nine shareholders or more, having in the whole, at least twenty-one shares.(*b*) The deed of partnership must contain provisions for the yearly audit of the accounts by two or more auditors chosen at a general meeting of the shareholders, and not being directors.(*b*) The deed of partnership must contain provisions for the publication once at least in every month of the assets and liabilities of the company, and for the yearly communication to every shareholder of the auditor's report, of a balance sheet, and profit and loss account.(*b*)

These are the several regulations prescribed by the Act of 1844, and apply still to banks formed under its

(*a*) 7 & 8 Vict. c. 113, s. 22.
(*b*) *Ibid.* s. 4.
(*c*) *Ibid.* s. 43.

provisions, except so far as they may be affected by registration, as afterwards mentioned.

Joint Stock Banks within Sixty-five Miles of London.— The 3 & 4 Will. 4, c. 98, s. 3, as already shown,(*d*) enabled banking companies of more than six members to carry on business within sixty-five miles from London, but they were not empowered by any Act of Parliament to sue or be sued by a public officer. The 7 & 8 Vict. c. 113, therefore, conferred upon these companies, which were established on the 6th of May, 1844, the powers and privileges of suing and being sued in the name of a public officer, and enacted that judgments, decrees and orders might be enforced, as under the 7 Geo. 4, c. 46, with respect to banking companies carrying on business beyond sixty-five miles from London, provided they made out and delivered the several accounts required by that Act.(*e*) The Act, however, was repealed in 1857,(*f*) but the last-mentioned provisions as to banking companies existing within sixty-five miles of London, suing and being sued, and making the returns, were re-enacted in 1862.(*g*)

3 & 4 Will. 4, c. 98.

Registration of Joint Stock Banks.—In 1857, the companies formed under the 7 & 8 Vict. c. 113, were required to be registered under the Joint Stock Banking Companies Act of that year ;(*h*) and legal proceedings commenced by or against a company when registered, or public officer, might be continued as if registration had not taken place, but execution was not to be issued against the effects of individual shareholders or members upon any judgment, decree or order obtained against the company ;(*i*) for, in the event of the property and effects of the company being insufficient to satisfy such judgment, order, or

20 & 21 Vict. c. 49.

(*d*) *Ante*, p. 334.
(*e*) 7 & 8 Vict. c. 113, s. 47.
(*f*) 20 & 21 Vict. c. 49, s. 12.
(*g*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, Part 2.
(*h*) 20 & 21 Vict. c. 49, s. 4.
(*i*) *Ibid.* s. 10.

decree, an order might be obtained for winding up the company.(a)

The procedure prescribed by the 7 & 8 Vict. c. 113, s. 9, for obtaining execution against individual members was practically abolished, and the right of contribution from all the shareholders by proceedings against the company was established and enforceable.

If these companies neglected to register before the 1st of January, 1858, they were incapacitated from suing either at law or in equity, though they might be sued, nor could any dividend be payable to their shareholders, and the directors or managers incurred a penalty of *5l.* for every day the registration was delayed.(b) The omission to register did not however render the company illegal.(b) The Act also enabled banking companies, which were not formed under the 7 & 8 Vict. c. 113, consisting of seven or more persons, having a capital of fixed amount and divided into shares also of fixed amount, and legally carrying on the business of banking at the time of the passing of the Act, to register themselves, having first obtained the assent of a majority of their shareholders.(c) When registered, the provisions contained in any Act of Parliament, letters patent, or deed of settlement, constituting or regulating these companies when inconsistent with the Joint Stock Companies Acts, 1856 and 1857, or with the Act itself, were no longer to apply to them.(c)

Registration was not to take away or affect any powers previously enjoyed by the companies of banking, issuing notes payable on demand, or of doing any other thing.(c) A banking company constituted under the 7 Geo. 4, c. 46, became insolvent, and stopped payment, but no resolution was passed for dissolving it. It was registered under the 20 & 21 Vict. c. 49, in pursuance of a resolution come to

(a) 20 & 21 Vict. c. 49, s. 10.
(b) *Ibid.* s. 5.
(c) *Ibid.* s. 6.

after the stoppage of the bank. Lord Justice TURNER held, that the registration was valid, for that, in order to bring a company within the 6th section of that statute, it was not necessary that it should continue to carry on business up to the time of its registration.(*d*) Upon these companies being registered, the articles of Table B., prescribed by the Act of 1856, relating to shares, their transmission and forfeiture, numbered one to nineteen, were, subject to the power of alteration conferred by the Acts of 1856 and of 1857, to be deemed the regulations of these companies.(*e*) The Act also repealed the 7 & 8 Vict. c. 113, as to banking companies to be formed after the 17th of August, 1857.(*f*)

With respect to the formation of new companies it provided, that seven or more persons, associated for the purpose of banking, might register themselves other than as a limited company, subject to the condition that the shares into which the capital of the company was divided were not to be of a less amount than 100*l*. each ; but that more than ten persons after the 17th of August, 1857, should not form themselves into a partnership for the purpose of banking, or, if so formed, carry on the business of banking unless registered as a company under that Act.(*g*)

Limited Banks.—Before treating of limited liability banking companies, which, on account of the novelty of the principles under which they may be established,

(*d*) *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 357 ; 27 L. J. Ch. 356. In an action by a banking company, registered under the 20 & 21 Vict. c. 49, s. 6, the Court allowed the defendant to plead a traverse of the registration of the company ; that the company was carrying on business until registration ; that before registration the company had stopped payment, and ceased to carry on business, and nul tiel corporation ; but disallowed a plea, that before registration the company had lost its reserved fund, and more than one-fourth of its paid-up capital, whereby the bank had ceased to carry on legally its business. *Liverpool Borough Bank* v. *Mellor*, 3 H. & N. 551.

(*e*) 20 & 21 Vict. c. 49, s. 12.

(*f*) *Ibid.* The section repealed the 9 & 10 Vict. c. 75, as to Irish and Scotch banking companies, and section 4 required them to register under the Act.

(*g*) 20 & 21 Vict. c. 49, s. 13.

demand a separate consideration, the legislation affecting the companies mentioned in this chapter remains to be noticed.

Joint Stock Banks under the Companies Act, 1862.—All banking companies which were, or were required to be, registered under the 20 & 21 Vict. c. 49, except those having the liability of their members limited by Act of Parliament or by letters patent, are to register under this Act.(*a*) Until registration, they cannot sue, although they may be sued, nor can they pay dividends, and the directors or managers are liable to a penalty of not less than 5*l*. per diem.(*b*)

Upon complying with the requisitions of this Act, as to registration, they are entitled to become an incorporated company,(*c*) and a certificate of incorporation to which the company is entitled, will be conclusive evidence that the requisitions of the Act in respect of registration have been complied with.(*c*) The provisions contained in any Act of Parliament, deed of settlement, or letters patent, constituting or regulating these companies, are still to apply to them.(*d*)

The Companies Act, 1862, repeals the 20 & 21 Vict. c. 49, but re-enacts the provision of the 12th section of that Act, legalizing private banking firms of not more than ten members. Private banks may consequently consist of ten partners,(*e*) or of any less number.

With respect to the formation of new companies, it expressly enacts, that no company, association or partnership consisting of more than ten persons shall be formed

(*a*) 25 & 26 Vict. c. 89, ss. 175, 176, 178, 179.
(*b*) *Ibid.* ss. 209, 210.
(*c*) *Ibid.* ss. 191, 192. The certificate of registration is conclusive evidence that all the requirements of the Act relative to registration have been complied with, and the incorporation of the company cannot after the grant of the certificate be impugned, even on the ground of misconduct of the registrar in reference to the registration. *In re Barned's Banking Company*, 36 L. J. Ch. 757.
(*d*) *Ibid.* s. 196.
(*e*) *Ibid.* s. 205, Third Schedule, Part 2.

after the 2nd of November, 1862, for banking purposes, unless it is registered as a company under the Act, or is formed in pursuance of some other Act of Parliament or of letters patent.(*f*) It provides, however, that seven or more persons may, by subscribing their names to a memorandum of association and complying with the requisitions of the Act in other respects as to registration, form an incorporated banking company with or without limited liability.(*g*) Since the facilities given to form companies upon the principle of limited liability, and the popularity which such companies have now attained, it is not likely that banking companies will henceforth be established with unlimited liability. It is therefore deemed unnecessary to enter into the law applicable to their formation.

We now proceed to consider the subject of limited banking companies.

(*f*) 25 & 26 Vict. c. 89, s. 4.
(*g*) *Ibid.* s. 6.

CHAPTER XLIV.

LIMITED BANKING COMPANIES.

Prior to the year 1858, banking companies could not be legally formed with limited liability except by special Acts of Parliament,(*a*) or by Royal charters, or by letters patent, under the 7 Will. 4 & 1 Vict. c. 73.(*b*) In 1858, the 21 & 22 Vict. c. 91 repealed so much of 20 & 21 Vict. c. 49, as prohibited banking companies from being registered with limited liability, and first authorised the formation and registration of banking companies of seven or more persons with limited liability.

Converting Unlimited into Limited Liability under the Act of 1858.—This Act also enabled existing unlimited banking companies to register themselves as limited banking companies.(*c*) But banking companies claiming to issue notes in the United Kingdom were not entitled to limited liability in respect of such issue, their liability remaining unlimited.(*c*) Previously to a company obtaining a certificate of registration with limited liability under this Act, it was necessary to give notice to its customers, or otherwise the certificate of registration, as to them, was wholly inoperative and unavailable. Before commencing business, and also on the 1st of February and the 1st of August in each year of its operations, every banking company, registered as a limited banking company, was bound to publish, in a prescribed form, a

(*a*) The Bank of England is an instance. The liability of the stockholders is limited to the amount of their subscriptions or shares: see 5 & 6 Will. & My. c. 20, s. 26.

(*b*) Section 4 enables the Crown to restrict by the letters-patent or charters the liability of the members to the amount of their shares.

(*c*) 20 & 21 Vict. c. 91.

statement of its liabilities and assets.(c) In 1862, the 21 & 22 Vict. c. 91 was repealed by the Companies Act of that year ;(d) but its provisions have been substantially re-enacted by the latter Act.

Converting into Limited Liability under Companies Act, 1862.—By section 179, banking companies, consisting of seven or more members, whose liability is unlimited, may become limited banking companies by registering under the provisions of the Act. Before registering as limited banking companies they must first obtain the assent of a majority of the members present or represented by proxy at a general meeting summoned for the purpose.(e)

The following documents must also be delivered to the Registrar of Joint Stock Companies,(f) viz :—

1. A list showing the names, addresses and occupations of all persons who, on a day named in the list, which must not be more than six clear days before registration, were members of the company, with the addition of the shares held by each member, distinguishing each share by its specific number.

2. A copy of the deed of settlement, Royal charter, letters patent or other instrument constituting or regulating the company.

3. This list and copy must be accompanied by a statement of the following particulars, viz. : The nominal capital of the company, and the number of shares into which it is divided ; the number of shares taken, and the amount paid on each share ; and the name of the company, with the addition of the word "limited," as the last word thereof.

(d) 25 & 26 Vict. c. 89, s. 205, Third Schedule, First Part. By the same Act it is made lawful for any number of persons, not exceeding ten, to carry on the business of banking in the same manner and upon the same conditions as any company of not more than six persons could before the Act (Sched. 3, Part 2).

(e) *Ibid.* s. 179. Registration of existing limited banking companies under the Act, is made compulsory ; and until registration they are liable to certain pecuniary penalties and subject to disabilities (sections 209, 210).

(f) *Ibid.* s. 183.

Where the whole or a portion of the capital has been converted into stock, the company must, instead of a statement of its shares, deliver a statement to the registrar of the amount of its stock, and of the names of the persons who were holders of stock, on some day to be named in the statement, not, however, being more than six clear days before registration.(*a*) The list and particulars must be verified by a statutory declaration of the directors of the company, or of two of them, or of any other two principal officers.(*b*)

A banking company must, for the purpose of obtaining registration with limited liability, change its name by the addition of the word "limited."(*c*)

A banking company, registering as a limited banking company, must, at least thirty days previously to obtaining a certificate of registration with limited liability, give notice that it is intended so to register, to every person and partnership firm having a banking account with the company, and the notice must be given either by delivering the same to such person or firm or leaving the same or putting the same into the post, addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company.(*d*)

In case the company omits to give this notice, the Act provides, that as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability is to be inoperative.(*d*)

(*a*) 25 & 26 Vict. c. 89, s. 185.
(*b*) *Ibid.* s. 186. By the Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I., a statutory declaration made under the provisions of the 5 & 6 Will. 4, c. 62, requires to be stamped with a duty of 2*s*. 6*d*.
(*c*) *Ibid.* s. 190.
(*d*) *Ibid.* s. 188.

Banking companies issuing notes in the United Kingdom are not entitled to limited liability in respect of such issue.(e) These companies continue subject to unlimited liability in this respect, and, if necessary the Act provides, that the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.(e)

Upon these provisions being complied with the company will become an incorporated limited banking company, having a common seal and a perpetual succession, with power to hold lands.(f) In the case of a banking company in Scotland, it becomes, by virtue of the registration, a bank incorporated, constituted or established by or under Act of Parliament.(f)

The certificate of incorporation, when obtained, will be conclusive evidence of the company having complied with the provisions of the Act in respect of registration, and of being authorised to be registered as a limited company. The date of incorporation mentioned in the certificate will be considered as the date of its incorporation.(g)

Effect of Registration.—On registration, the provisions in the Act of Parliament, deed of settlement, letters patent, or other instrument constituting or regulating the company, will apply to the limited company; and the provisions of the Companies Act of 1862 will also apply (subject to certain exceptions) to such company, and to the members, contributories and creditors thereof, as if the company had been originally formed under that Act.(h)

(e) 25 & 26 Vict. c. 89, s. 182, repealed by Companies' Act, 1879, s. 6 (42 & 43 Vict. c. 76); see *post*, p. 399.

(f) *Ibid.* s. 191. The section also prescribes the fees payable on registration of unlimited banking companies. See Table of Fees B., *post*, p. 404, *n.*

(g) *Ibid.* s. 192. But see section 188.

(h) *Ibid.* s. 196.

All the property of the company, its interests and rights existing at the date of its registration, pass to and vest in the incorporated company.(*a*) Registration is not to affect or prejudice the liability of the company to have enforced against it, or its right to enforce, debts, obligations, or contracts entered into by, to, with, or on behalf of, such company previously to such registration.(*b*) Actions, suits and other legal proceedings pending against the company, or its members or the public officer, at the time of its registration, may be continued. Execution, however, is not to issue against the effects of an individual member upon any judgment, decree, or order; but, in the event of the property and effects of the company being insufficient to satisfy these liabilities, an order may be obtained for winding up the company.(*c*) The mode of winding up, and the liabilities of its members, will form the subject of a separate chapter.

Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

Converting into Limited Liability under Companies Act, 1879.(*d*)—This Act, so far as is consistent with the tenor thereof, is to be construed as one with the Companies Acts, 1862, 1867, and 1877.(*e*)

Registration anew of company. 25 & 26 Vict. c. 89,

By section 4 it is enacted that, subject to what is mentioned in the Act, any company registered before or after its passing as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of the Act.

(*a*) 25 & 26 Vict. c. 89, s. 193.

(*b*) *Ibid.* s. 194. This section does not apply to the case of a pure *contributory*. And if a company originally unlimited, but subsequently limited, is wound up, members of the unlimited company cannot be made liable as contributories beyond the limit of their shares for debts contracted before the company became limited. *Aliter*, under the Act of 1856, see section 116. *Sheffield and Hallamshire, &c., Society, Fountain's Case*, 34 L. J. Ch. 593; *Harvey* v. *Clough*, 2 N. R. 204. *Quære*, whether they could not be made liable on the obligation attaching to the partnership at common law. *Lanyon* v. *Smith*, 2 N. R. 118. See Buckley, 341.

(*c*) *Ibid.* s. 195. See *Lanyon* v. *Smith*, *supra*.

(*d*) 42 & 43 Vict. c. 76.

(*e*) Section 3. The Act does not apply to the Bank of England (section 2).

The registration of an unlimited company as a limited company in pursuance of this Act is not to affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.(*f*)

30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, 42 & 43 Vict. c. 76.

25 & 26 Vict. c. 89.

Reserve capital of company, how provided. 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, 42 & 43 Vict. c. 76.

By section 5, an unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.(*g*)

25 & 26 Vict. c. 89, s. 182, repealed, and liability of

By section 6, section one hundred and eighty-two of the Companies Act, 1862, is repealed, and in its place it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of this

(*f*) See *ante*, p. 398.
(*g*) Section 5.

bank of issue unlimited in respect of notes.

Act, shall not be entitled to limited liability in respect of its notes ; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company ; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.(*a*)

(*a*) The following provisions are inserted respecting the auditing of accounts of banking companies :—

By section 7 (1), once at the least in every year the accounts of every banking company registered after the passing of the Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company ; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company : Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

By section 9, on the registration, in pursuance of the Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

Application of 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, and 42 & 43 Vict. c. 76.

By section 10, a company authorised to register under the Act may register thereunder and avail itself of the privileges conferred by the Act, notwithstanding any provisions contained in any Act of Parliament, Royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

Privileges of Act available notwithstanding constitution of company.

Limited Banks under the Companies Act, 1862.—As already stated, banking firms consisting of seven or more persons may register under the Act with limited liability.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company, and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors and shall be paid by the company.

And by section 8 every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of the Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Since the 2nd of November, 1862, when the Companies Act of that year came into operation, limited banking companies can only be legally formed and registered under its provisions. It is the Act at present in force on the subject.(*a*)

When, therefore, it is proposed to establish a banking company in England, Ireland, or Scotland, on the principle of having the liability of its members limited to the amount of their shares, or, in the words of the statute, a company limited by shares,(*b*) seven persons at the least must subscribe a memorandum of association,(*c*) containing the following particulars:—

1. The name of the company, with the addition of the word "limited" at the end of the name.

2. The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is situate.

3. The objects for which the company is established.

4. A declaration of the liability of the members being limited.

5. The amount of its capital divided into shares of a fixed amount.

Each subscriber cannot take less than one share, and must write opposite to his name the number of shares which he takes.(*d*)

The memorandum must be stamped as a deed, and signed by each subscriber, in the presence of a witness, who must attest his execution.(*d*)

A company may modify or alter the memorandum, if authorised by its regulations or by special resolution, so as to increase the capital by the issue of new shares, or to consolidate and divide the capital into shares of larger amount than the existing shares, or to convert the paid-up

(*a*) The Companies Act, 1879, provides for the re-registration of companies formed and registered under the Act of 1862. See *ante*, p. 398.

(*b*) 25 & 26 Vict. c. 89, s. 8.

(*c*) *Ibid.* s. 6. See *National Debenture Corporation* (1891), 2 Ch. 505.

(*d*) *Ibid.* ss. 8, 11. See also section 25. As to agent signing, see *In re Whiteley*, 32 Ch. D. 338. As to infant subscriber, see *In re Laxon and Company*, 40 W. R. 620; *Re Nassau Phosphate Company*, 2 Ch. D. 610.

shares into stock.(e) With these exceptions, and of changing the name, as mentioned hereafter, the Act provides, that no other alterations shall be made by any company in the conditions contained in the memorandum.(e)

In the case of a limited banking company, the memorandum is usually, and in the case of an unlimited company must be, accompanied by articles of association prescribing and defining the constitution, business, and capital of the company, the amount, allotment, transfer and forfeiture of shares, the calls, the meetings of members, the number of their votes, the appointment, qualification, remuneration, powers and duties of directors and of officers, auditing the accounts, and such other regulations as the subscribers of the memorandum may deem expedient.(f) The company may adopt, modify, or exclude all or any of the provisions of Table A. given by the Act.(f) These provisions are usually embodied in the articles. The articles must be separately paragraphed and numbered arithmetically,(f) printed and stamped as a deed, and

(e) 25 & 26 Vict. c. 89, s. 12. On this section, see *Dent's Case*, L. R. 8 Ch. 776; *Ashbury* v. *Watson*, 30 Ch. D. 376; *Re Financial Corporation Remington's Case*, L. R. 2 Ch. 729; *In re New Zealand Banking Corporation*, L. R. 3 Ch. 131.

Reduction of Capital.

By the Companies Acts, 1867, s. 9, and 1877, s. 3, a company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but an order of the Court is necessary for its confirmation. See *Thomson* v. *Trustees and Executors' Corporation* (1895), 2 Ch. 454; *In re Lamson Store Company* (1895), 2 Ch. 726; *In re Omnium Investment Company* (1895), 2 Ch. 127; *In re Wallasey Brick Company* (1894), W. N. 20; *British and American Trustee Corporation* v. *Couper* (1894), A. C. 399.

By the Companies (Memorandum of Association) Act, 1890, a company registered under the Act of 1862 may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company under the conditions and in the manner therein provided. The alteration must, however, be confirmed by the Court, whose duty it is to see not only that the proposed alteration is within the scope of the Act, but also that it is fair and reasonable both as regards the members and the creditors of the company. *Re Government Stock Investment Company* (1892), 1 Ch. 597. See also on this Act (which will be found in the Appendix), the following cases: *In re Reversionary Society* (1892), 1 Ch. 615; *Foreign and Colonial Government Trust Company* (1891), 2 Ch. 395; *Re Empire Trust*, 64 L. T. R. 221; *Land Corporation of West Australia*, 91 L. T. N. 176; *In re Mining Shares Investment Company* (1893), 2 Ch. 660.

(f) *Ibid.* s. 14. The articles and memorandum may be read together to

signed by each subscriber in the presence of a witness.(*a*) The memorandum and articles must be delivered to the registrar for registration.(*b*) Upon registration they bind the company and its members as if each member had executed these instruments as deeds; and all moneys payable by any member to the company in pursuance of the regulations and conditions of the company shall be deemed to be a debt due in the nature of a specialty

explain any ambiguity (*Anderson's Case*, 7 Ch. D. 99); but the former cannot vary or alter what would be the result of the latter if it stood alone. *Guinness* v. *Land Corporation of Ireland*, 22 Ch. D. 376.

The articles may also supplement the memorandum when it is silent on matters not required to be stated therein. *Ibid.*

(*a*) 25 & 26 Vict. c. 89, s. 16.

(*b*) *Ibid.* s. 17. This section prescribes, in Table B., the fees payable on registration of the memorandum and articles, viz.:—

	£	*s.*	*d.*
For registration of a company whose nominal capital does not exceed 2,000*l.*, a fee of - - - - - - -	2	0	0
For registration of a company whose nominal capital exceeds 2,000*l.*, the fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)			
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 2,000*l.*, up to 5,000*l.* - - - - -	1	0	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* - - - -	0	5	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 100,000*l.* - - - - - - - -	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000*l.*, or part of 1,000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing unlimited banking company, the same fee as is charged for registering a new company.			
For registering any document required or authorised to be registered, other than the memorandum of association -	0	5	0
For making a record of any fact authorised or required to be recorded by the registrar, a fee of - - - - -	0	5	0

A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the registrar of joint stock companies in England, Scotland, or Ireland, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited liability shall be delivered to the said registrar, and every such statement shall be charged with an *ad valorem* duty of two shillings for every 100*l.* Stamp Act, 1891, s. 112, taken from the Customs and Inland Revenue Act, 1888, s. 11.

debt.(*c*) The registrar thereupon grants a certificate of the incorporation of the company by the name contained in the memorandum of association, as a banking company, limited, whose members, in the event of its being wound up, will be liable only to the amounts remaining unpaid upon their respective shares. The certificate is conclusive as to the fact of the company having complied with the requirements of the Act with regard to registration.(*d*)

The company may, by passing special resolutions in general meetings, from time to time, add to or alter the regulations contained in its articles, and these regulations are to be deemed of the same validity as if they had been originally in the articles of association. These regulations may be altered or modified by subsequent special resolutions.(*e*)

A copy of the memorandum, with the articles of association, must be forwarded to every member at his request,

(*c*) 25 & 26 Vict. c. 89, s. 16. See *Whittaker* v. *Kershaw*, 45 Ch. D. 326.

(*d*) *Ibid.* s. 18. See *Oakes* v. *Turquand*, L. R. 2 H. L. 325.

(*e*) *Ibid.* s. 50. Such alterations, however, must only be within the limits defined by the memorandum of association; if they go beyond this they are void. *Ashbury Railway Company* v. *Riche*, L. R. 7 H. L. 671, 678; and see *Walker* v. *London Tramways Company*, 12 Ch. D. 705; *Re Asiatic Banking Corporation*, L. R. 4 Ch. 252. As to increasing capital, see *In re Bank of Hindustan, China, and Japan*, L. R. 9 Ch. 1; and as to reduction of capital, *Re West India and Pacific Steam Company*, L. R. 9 Ch. 11 *n.*; *Patent Invert Sugar Company*, 31 Ch. D. 166. As to mortgaging capital, see *Jackson* v. *Rainsford Coal Company* (1896), 2 Ch. 340. A company by special resolution may alter its articles so as to enable it to accept surrenders of old, in exchange for new, shares. *Teasdales' Case*, L. R. 9 Ch. 54. As to a company purchasing its own shares, see *Trevor* v. *Whitworth*, 12 App. Cas. 409, where such a purchase, although authorised by its articles, was held *ultra vires;* and see *Ashbury Railway Carriage Company* v. *Riche*, L. R. 7 H. L. 653; *In re Dronfield Silkstone Coal Company*, 17 Ch. D. 76; *Hope* v. *International Financial Society*, 4 Ch. D. 327. The adoption of a contract *intra vires* the company, but *ultra vires* the directors, may be effected by ordinary resolution without altering the articles (*Grant* v. *Switchback Railway Company*, 40 Ch. D. 135); but the articles must be altered if it is desired to give the directors power to do acts *in futuro* not authorised by the articles as they stand. *Ibid.* A person dealing with a company is not bound to enquire whether all its internal regulations have been complied with, provided everything is *ex facie* regular. See *post*, p. 452. As to borrowing power of company, see *ante*, p. 168. It has been held that a company cannot contract itself out of the power to alter its articles. *Malleson* v. *National Insurance and Guarantee Corporation* (1894), 1 Ch. 200.

Modification of Articles.

on the payment of 1*s.*, or such less sum as is prescribed by the regulations of the company, for the copy. If the company neglects to forward a copy, it will incur a penalty not exceeding one pound.(*a*)

Name.—A banking company must not assume or adopt the name, or what is practically the name, of an existing company, or be registered in a name identical with the name of an existing company, except where the existing company is in the course of being dissolved and consents. If by inadvertence a company is so registered, it may, with the sanction of the registrar, change its name, and the registrar is to enter the new name on the register, and issue a certificate accordingly.(*b*) Should a banking company wish to change its name after incorporation, provision is made for enabling it to do so by passing a special resolution, and obtaining the approval of the Board of Trade.(*c*)

Special provisions are made for the widest possible publication of the name. The company must paint or affix, and keep painted or affixed, its name on the outside of every office or place in which it carries on business, in a conspicuous position, in letters easily legible, and must have its name engraven in legible characters on its seal, and its name mentioned in legible characters in all notices, advertisements, and other official publications, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money, purporting to be signed by or on behalf of the company, and in all its receipts and letters of credit.(*d*)

(*a*) 25 & 26 Vict. c. 89, s. 19.

(*b*) *Ibid.* s. 20. *Merchant Banking Company of London* v. *Merchants Joint Stock Bank*, 9 Ch. D. 560; *Lawson* v. *Bank of London*, 18 C. B. 84; *Hendriks* v. *Montagu*, 17 Ch. D. 638. See also *Rendle* v. *Edgcumbe*, 63 L. T. 94; *Lee* v. *Haley*, L. R. 5 Ch. 155; *Street* v. *Union Bank of Spain*, 30 Ch. D. 156. An injunction was granted at the suit of the Capital and Counties Bank to restrain the use of the name Capital and Counties Deposit Bank. See *Times*, 12th February, 1884. As to restoring old names, see *In re Australasian Mining Company* (1893), W. N. 74.

(*c*) 25 & 26 Vict. c. 89, s. 13. See *Shackleford and Company* v. *Dangerfield*, L. R. 3 C. P. 407.

(*d*) *Ibid.* s. 41. See *Atkin* v. *Wardle*, 61 L. T. (N.S.) 23.

A penalty not exceeding 5*l.* will be incurred by a company for non-publication of these particulars in the mode prescribed.(*e*)

A director, manager or officer, or any person on the behalf of the company, using any but its engraved seal, or issuing any notice, advertisement, or official publication, or signing, on behalf of the company, any bill of exchange, promissory note, indorsement, cheque, order for money or letter of credit, in which the name of the company is not mentioned, will incur a penalty of 50*l.* He will also be personally liable to the holder of such bill, note, cheque or order for the full amount, unless duly paid by the company.(*f*)

Registered Office. — The company must also have a registered office of business. A company not having one will incur a penalty not exceeding 5*l.* for every day business is carried on.(*g*) Notice of the situation of the registered office, as well as of any change, is to be given to the registrar, and recorded by him. Until such notice, the company will not have complied with the Act.(*h*)

Shares.—The shares of the members are personal estate, transferable according to the regulations of the company, and distinguishable by appropriate numbers.(*i*) But shares of deceased members may be transferred by their personal representatives, although not themselves members.(*k*)

(*e*) 25 & 26 Vict. c. 89, s. 42. An additional penalty of 5*l.* is incurred for every day the name is not kept painted, &c.

(*f*) *Ibid.*

(*g*) *Ibid.* s. 39. See *British Foreign Gas Company*, 13 W. R. 649; *In re Fortune Mining Company*, L. R. 10 Eq. 390; 40 L J. Ch. 43; *Jones* v. *Scottish Accident Insurance Company*, 17 Q. B. D. 422; *Watkins* v. *Scottish Imperial Insurance Company*, 23 Q. B. D. 285.

(*h*) *Ibid.* s. 40.

(*i*) *Ibid.* s. 22. See *Colonial Bank* v. *Whinney*, 11 App. Cas. 426; *Gilbert's Case*, L. R. 5 Ch. 559; 39 L. J. Ch. 837; *Moffatt* v. *Farquhar*, 7 Ch. D. 591; 47 L. J. Ch. 355; *Zuccani* v. *Nucupai Gold Mining Company*, 60 L. T. R. 23.

(*k*) See Companies Act, 1862, s. 24, and Table A., Articles 12—14. An executor may either have the shares transferred into his own name, in which case he will become a shareholder in the company in his own right, or if he does not desire to do this he may sell them, for which he is entitled to be allowed a reasonable time, and produce a buyer who will take a

Capital.—Notice of an increase of the registered capital of the company, whether the shares are converted into stock or not, must be given to the registrar within fifteen days after the resolution authorising the increase.(*a*) The registrar is to record the amount of the increase.(*a*)

So, a company that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, is required to give notice thereof to the registrar.(*b*) A company which neglects to give notice of increasing its capital within the time mentioned, and a director or manager authorising the same, will incur a penalty not exceeding 5*l.* for every day of the default.(*c*)

Trusts.—Notice of trusts, expressed, implied, or constructive, cannot be entered on the register, or be receivable by the registrar.(*d*)

A certificate under the seal of the company of the shares or stock held by a member will be *primâ facie* evidence of his title.(*e*)

Members.—The Act defines the members to be subscribers of the memorandum of association, and every

transfer of them. See *City of Glasgow Bank (Buchan's Case)*, 4 App. Cas. 588; see further, *In re Cheshire Banking Company*, 32 Ch. D. 301, and *Re Leeds Banking Company*, L. R. 1 Ch. 231, as to executor accepting new shares. As to circumstances under which a notice sent by post to a deceased member was held notice to his executors, see *New Zealand Gold Extraction Company* v. *Peacock* (1894), 1 Q. B. 622.

(*a*) 25 & 26 Vict. c. 89, s. 34.

(*b*) *Ibid.* s. 28.

(*c*) *Ibid.* s. 34.

(*d*) *Ibid.* s. 30. See *Leifchild's Case*, L. R. 1 Eq. 231; *Muir* v. *Glasgow Bank*, 4 App. Cas. 377. Although the trustee is liable he is entitled to an indemnity from his *cestui que* trust. *Hemming* v. *Maddick*, L. R. 7 Ch. 395; *Levy* v. *Ayres*, 3 App. Cas. 852. Where, however, the trust is a fraudulent one, the real owner is liable to the company. *Cox's Case*, 38 L. J. Ch. 145. See further, *Cree* v. *Somervail*, 4 App. Cas. 648; *Colquhoun* v. *Courtney*, 43 L. J. Ch. 338; *Bradford Banking Company* v. *Briggs*, 12 App. Cas. 29, 38; *New Zealand Trust Company* (1893), 1 Ch. 403.

(*e*) *Ibid.* s. 31. As to how far a company is estopped by its certificate, see *Shropshire Union Railway Company* v. *Reg.*, L. R. 7 H. L. 509; *Balkis Consolidated Company* v. *Tomkinson* (1893), A. C. 396; 63 L. J. Q. B. 134; *Barton* v. *North Western Railway Company*, 24 Q. B. D. 77; 59 L. J. Q. B. 33; *In re Ottos Diamond Mine* (1893), 1 Ch. 618; and the Forged Transfers Acts, 54 & 55 Vict. c. 43; 55 & 56 Vict. c. 36.

other person, who has agreed to become a member, and whose name is entered on the register required to be kept by the company.(*f*) The articles of association generally prescribe that a written application for shares, followed by an allotment, shall be deemed an acceptance of the shares. An acceptance in this form will be binding, and a sufficient authority for placing the name of an allottee on the register.(*g*)

Fraud.

A person who has been induced to take shares by fraud or misrepresentation may rescind the contract; but he must do so as soon as he becomes acquainted with the circumstances, giving him ground for doing so, or else he forfeits all claim to relief, and if a shareholder, after discovering the fraud, nevertheless deals with his shares, such dealing on his part will be taken as amounting to an election to affirm the contract, and he cannot afterwards repudiate it.(*h*) "The leading principle in all these cases is this—a man must not play fast and loose; he must not say 'I will abide by the company, if successful, and I will leave the company, if it fails,' and, therefore, when a misrepresentation is made, of which any one of the shareholders has notice, and can take advantage to avoid his contract with the company, it is his duty to determine at once whether he will depart from the company, or whether he will remain a member."(*i*) A shareholder in such a case must not merely repudiate his contract,(*k*) but he must with the utmost promptitude take steps to have his

(*f*) *Ibid.* s. 23. See *Arnot's Case*, 36 Ch. D. 707; *Onslow's Case*, 57 L. J. Ch. 338; *In re Scottish Petroleum Company*, 23 Ch. D. 430; *Ex parte Jobling*, 57 L. J. Ch. 336; *Coventry's Case* (1891), 1 Ch. 202; *Ooregum Gold Company* v. *Roper* (1892), A. C. 134; *Jackson* v. *Turquand*, L. R. 4 H. L. 305. See further as to Shares, Chapter XLIX.

(*g*) A withdrawal of an application for shares may be made orally before notice of allotment is given. *In re Brewery Assets Corporation* (1894), 3 Ch. 272.

(*h*) *Oakes* v. *Turquand*, L. R. 2 H. L. 375; *Peek* v. *Gurney*, L. R. 6 H. L. 384; *Nicholl's Case, In re Royal British Bank*, 3 D. & I. 387; *Re Mount Morgan Gold Mine Company*, 56 L. T. 622; *Scholey* v. *Central Railway of Venezuela*, L. R. 9 Ch. 266.

(*i*) Per Lord ROMILLY in *Ashley's Case*, 9 Eq. 263.

(*k*) *Hare's Case*, L. R. 4 Ch. 503; *Re Scottish Petroleum Company*, 23 Ch. D. 413.

name removed from the register.(*a*) A transferee from the original allottee of shares has no right to rescind, on the ground that the prospectus contains fraudulent misrepresentations.(*b*)

The liability of members as contributories will be separately considered.

Register of Members.—The register required to be kept by the company must contain the following particulars,(*c*) viz. :—

(1.) The names and addresses, and the occupations, if any, of the members of the company; a statement of the shares held by each member, distinguishing each share by its number; and the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member.

A company, director or manager acting in contravention of these provisions will incur a penalty not exceeding 5*l.* for every day of non-compliance.(*c*)

(*a*) On the question of delay, see *Ogilvie* v. *Currie*, 37 L. J. Ch. 541; *Langham* v. *East Wheal Rose Mining Company*, 37 L. J. Ch. 253; *Re Reese River Silver Mining Company*, L. R. 2 Ch. 604; *Central Railway of Venezuela* v. *Kisch*, L. R. 2 H. L. 112. "When once it has been established that there has been any fraudulent misrepresentation or wilful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it, to tell him that he might have known the truth by proper enquiry:" *Central Railway of Venezuela* v. *Kisch*, *supra;* and a person applying for shares is entitled to rely upon the statements contained in the prospectus are true, and he is not bound to enquire whether they are so or not. *Redgrave* v. *Hurd*, 20 Ch. D. 13. In the recent case of *Andrews* v. *Mockford* (1896), 1 Q. B. 372, it was held that where the object of the issue of the prospectus was not merely to induce application for shares, but also to induce persons to whom it was sent to purchase shares in the market, the person issuing the prospectus is responsible for the consequences of a false representation contained in it to any person to whom the prospectus has been sent, and who is induced to purchase shares on the faith of the false representation, and thereby sustains a loss.

(*b*) *Peek* v. *Gurney*, L. R. 6 H. L. 384.

(*c*) 25 & 26 Vict. c. 89, s. 25.

The register will be *primâ facie* evidence of its contents.(*d*)

Annual List of Members.—An annual list of all persons, who are members on the fourteenth day succeeding that on which the first of the ordinary general meetings of the company is held, must be made out, containing their names, addresses, and occupations, and the number of shares held by each, and the following summary of particulars,(*e*) viz. :—

(1.) The amount of the capital of the company, and the number of shares into which it is divided :

(2.) The number of shares taken from the commencement of the company up to the date of the summary :

(3.) The amount of calls made on each share :

(4.) The total amount of calls received :

(5.) The total amount of calls unpaid :

(6.) The total amount of shares forfeited :

(7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

This list and summary must be in a separate part of the register, and completed within seven days after the day mentioned for its being made out ; and a copy forthwith forwarded to the registrar.(*e*) A company neglecting to forward the list or summary will incur a penalty not exceeding 5*l.* for every day, and a director or manager permitting the same a similar penalty.(*f*)

Where any of the shares of the company have been converted into stock, the list must show the amount of

(*d*) 25 & 26 Vict. c. 89, s. 37.
(*e*) *Ibid.* s. 26.
(*f*) *Ibid* s. 27.

stock held by each member instead of the amount of his shares.(*a*)

Rectifying Register.—In case of any errors or mis-statements being introduced into the register, provision is made for their correction.(*b*) If the name of any person is entered in or omitted from the register, or default is made, or unnecessary delay takes place in entering the fact of any person having ceased to be a member, the person or member aggrieved, or any other member, or the company itself, may apply in a summary manner to a superior court of law or equity for an order to rectify the register. The Court may refuse the application with or without costs; or, if satisfied of its justice, may order a rectification of the register, the company paying the costs and any damages the party aggrieved may have sustained.(*c*)

The Court may also decide questions relating to the title of the applicant, or arising between two or more members or alleged members.(*c*) When the Court orders the register to be rectified, notice must be given to the registrar of the amendment or alteration.(*d*)

Inspection of Register.—A register of members, commencing from the date of the registration of the company, must be kept at its registered office for inspection by the members gratis, and by other persons on the payment of 1*s*., or a less sum if prescribed by the company, for each inspection. A member or any other person may require a copy of the register, or of the list of members or summary of particulars on the payment of 6*d*. for every hundred words copied. Should an inspection or a copy be refused, the company, director and manager will incur a

(*a*) 25 & 26 Vict. c. 89, s. 29.
(*b*) *Ibid* s. 35.
(*c*) *Ibid*. See *Ex parte Shaw*, 2 Q. B. D. 463. *Wember's Case*, 59 L. T. 579. The power is discretionary, and will not be exercised where there are complicated questions of law or of fact. And see *In re Otto's Diamond Mines* [1893], 1 Ch. 618.
(*d*) *Ibid* s. 36.

penalty not exceeding 2*l*., and an additional penalty not exceeding 2*l*. for every day the refusal continues.(*e*)

In addition to these penalties, a judge at chambers may order an immediate inspection. The company may, by giving notice in any newspaper circulating in the district where its registered office is situate, close the register for a period not exceeding thirty days in each year.(*e*)

Issuing Promissory Notes and Bills of Exchange.—With respect to these instruments, the Act provides that they are to be deemed to have been made, accepted or indorsed on behalf of the company, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company, by any person acting under the authority of the company.(*f*) A bill of exchange addressed to a company and signed "A. B., C. D., directors of the company," was held to bind the company, and not the directors; the directors being in fact authorised to accept bills.(*g*) So, where a promissory note was signed by persons describing themselves as directors of a limited company, and countersigned by the secretary of the company, as follows:—

"London, December 31, 1856.—Three months after date we jointly promise to pay Mr. Frederic Shaw or order 600*l*. for value received in stock, *on account* of the London and Birmingham Hardware Company, Limited:" it was held, that the directors who signed it were not personally liable on the note.(*h*) A person advanced money for the purposes of a company in which he was a shareholder, and received a promissory note in the following form: "We, the directors of the Isle of Man Slate and Flag Company, Limited, do promise to pay to Mr. J.

(*e*) 25 & 26 Vict. c. 89, ss. 32, 33.
(*f*) *Ibid* s. 47.
(*g*) *Okell* v. *Charles*, 34 L. T. 822.
(*h*) *Lindus* v. *Melrose*, 3 H. & N. 177; 27 L. J. Ex. 326.

Dutton 1,600*l.*, with interest at the rate of 6*l.* per cent. per annum until paid." It bore the seal of the company and was signed by four directors. The lender had stated that he would advance the money to the directors only, and the Court held that the directors who had signed the note were personally liable upon it.(*a*)

Statement of Assets and Liabilities.—As a protection to creditors and others, the Act imperatively requires the publication of a statement of its capital, assets and liabilities twice a year, and a register of the company's mortgages to be kept. With respect to the statement, the Act enacts, that every limited banking company shall, before it commences business, and also on the first Monday in February and first Monday in August in every year, make a statement in a form prescribed,(*b*) or as near thereto as circumstances will admit. A copy of the statement is to be put up in a conspicuous place in the registered office, and in every branch or place where the business of the company is carried on. If default is made in compliance with these provisions, the company is liable

(*a*) *Dutton* v. *Marsh*, 40 L. J. Q. B. 175. See, also, *Cortauld* v. *Sanders*, 15 W. R. 906; *Ex parte Agra Bank*, L. R. 9 Eq. 725; *Ex parte Overend*, L. R. 4 Ch. 472, 473; *In re Cunningham and Company*, 36 Ch. D. 532; *Atkins* v. *Wardle*, 58 L. J. Q. B. 377.

(*b*) 25 & 26 Vict. c. 89, s. 44, and Form (D.), First Schedule, which is as follows:—

The capital of the company is , divided into shares of each.

The number of shares issued is .

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (or July) were—

Debts owing to sundry persons by the company:—

On judgment, £ .

On specialty, £ .

On notes or bills, £ .

On simple contracts, £ .

On estimated liabilities, £ .

The assets of the company on that day were:—

Government securities [*stating them*], £ .

Bills of exchange and promissory notes, £ .

Cash at the bankers, £ .

Other securities, £ .

A deposit company is also bound to make the above statement.

to a penalty not exceeding 5*l.* for every day of default; and a director or manager permitting the same incurs a similar penalty.(*c*) Members and creditors are entitled to a copy of the statement on payment of a sum not exceeding sixpence.(*c*)

Register of Mortgages.—All mortgages and charges *specifically* affecting property of the company must be kept in a register. A short description of the property, the amount of the charges created and the names of the mortgagees or persons entitled to the charges must be entered. If these entries are not made, every director, manager, or other officer,(*d*) who *knowingly* and *wilfully*(*e*) authorises or permits the omission, will incur a penalty not exceeding 50*l.*(*f*) It would seem that non-registration will not invalidate the mortgage.(*g*)

A company deposited title deeds with a bank as collateral security for bills under discount, but the deposit was not accompanied with the formalities required by its articles of association upon making a charge or a mortgage, nor was the security registered. At the time of the winding up of the company it was indebted to the bank for a bill of exchange which had been discounted for the company, but which had been deposited with the bank to secure advances made to various persons. The securities comprised in the deeds had been realised; these remained in the bank's hands, after satisfying the bill which had been discounted for the company itself; it was decided that the deposit of the deeds constituted a valid mortgage, and

(*c*) 25 & 26 Vict. c. 89, s. 44.

(*d*) This does not include a banker (*Ex parte National Bank*, L. R. 14 Eq. 507); but includes a solicitor. *Ex parte Valpy*, L. R. 7 Ch. 289.

(*e*) *In re Borough of Hackney Newspaper Company*, 3 Ch. D. 669.

(*f*) 25 & 26 Vict. c. 89, s. 43; *In re Borough of Hackney Newspaper Company*, 3 Ch. D. 669.

(*g*) *Ex parte Valpy, supra; Wright* v. *Horton*, 12 App. Cas. 371. As to their right to avail themselves thereof as against creditors, see *In re International Pulp Company, Knowles' Mortgage*, 6 Ch. D. 556; 46 L. J. Ch. 625; *In re Wynn Hall Coal Company*, L. R. 10 Eq. 515; *In re Native Iron Ore Company*, 2 Ch. D. 345; *Ex parte National Bank, infra; In re South Durham Iron Company*, 11 Ch. D. 579; 48 L. J. Ch. 480; *In re Underbank Mills Cotton Company*, 31 Ch. D. 226.

that the bankers, not being officers of the company within the meaning of the Companies Act, 1862, s. 165, were not bound to see that the formalities required by the articles of association had been complied with.(*a*)

Shareholders who have mortgages made to them by the company are not bound to see that they are registered.(*b*) This register is to be open to the inspection of creditors and members at all reasonable times. Should an inspection be refused by any officer, director, or manager, a penalty not exceeding 5*l*. is incurred, and a further penalty not exceeding 2*l*. for every day of continued refusal. A judge at chambers may order an immediate inspection of the register.(*c*)

Meetings and Minutes.—A general meeting of the company must be held once at the least in every year.(*d*)

The minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers, must be duly entered in books provided for the purpose.(*e*) These minutes, if purporting to be signed by the chairman of the meeting at which the resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, will be receivable as evidence in legal proceedings.(*e*)

These minutes, when made, will be *primâ facie* evidence of the due holding of the meetings, passing of the resolu-

(*a*) *Ex parte National Bank*, L. R. 14 Eq. 507; 41 L. J. Ch. 323. As to what is sufficient registration, see *Native Iron Ore Company*, 2 Ch. D. 345; 45 L. J. Ch. 517. And as to company's power to mortgage, see *Patent File Company*, L. R. 6 Ch. 83; *Bath's Case*, 8 Ch. D. 334.

(*b*) *General South American Company*, 2 Ch. D. 337.

(*c*) 25 & 26 Vict. c. 89, s. 43.

(*d*) *Ibid.* s. 49. Within four months after registration. See Companies Act, 1867, s. 39 (30 & 31 Vict. c. 131).

A chairman has no power to dissolve a meeting before it has finished the business for which it is convened, and if he does so the meeting is competent to resolve to appoint another chairman, and go on with the business. *National Dwelling Society* v. *Sykes* (1894), 3 Ch. 272.

(*e*) 25 & 26 Vict. c. 89, s. 67. See *Roney's Case*, 33 L. J. Ch. 731; *Jones* v. *Graving Dock Company*, 2 Q. B. D. 314; 46 L. J. Q. B. 314. As to power of chairman to count proxies on a vote by show of hands, see *Ernest* v. *Loma Gold Mines* (1896), 2 Ch. 572, disapproving *In re Bidwell Brothers* (1893), 1 Ch. 603.

tions and proceedings, the appointment of directors, and the validity of their acts, notwithstanding the discovery of any defects in their appointments or qualifications afterwards.(*e*)

Special Resolutions.—A resolution is special when passed by a majority of not less than three-fourths of the members, entitled according to the regulations of the company to vote either in person or by proxy, at a general meeting, of which notice to propose the resolution has been given, and confirmed by a majority of such members at a subsequent general meeting, held at an interval of not less than fourteen days nor more than a month from the first meeting.(*f*) Unless a poll is demanded by at least five members, a declaration of the chairman at the meeting, that the resolution has been carried, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. Notice of meetings will be deemed duly given, and the meetings duly held, whenever the notice has been given and the meetings are held in the manner prescribed by the regulations of the company. In computing the majority when a poll is demanded, reference is to be had to the number of votes to which each member is entitled by the regulations of the company.(*f*)

A copy of every resolution in force must be annexed to or embodied in every copy of the articles of association issued after the passing of the resolution.(*g*) A company making default will incur a penalty not exceeding 1*l.* for each copy so issued; and a director or a manager knowingly and wilfully authorising or permitting the issue will incur a similar penalty.(*g*)

(*f*) 25 & 26 Vict. c. 89, s. 51. See *Young* v. *South African and Australian Exploration Syndicate* (1896), 2 Ch. 268; *In re Silkstone Fall Company*, 1 Ch. D. 38; *In re Bridport Old Brewery Company*, L. R. 2 Ch. 191. The fourteen days is exclusive of both the days of meeting. *In re Railway Sleepers Supply Company*, 29 Ch. D. 204. But if the interval is less, the statutory defect only affects the position of the company and the shareholders *inter se*, and does not concern the creditors. *In re Millers Dale Lime Company*, 31 Ch. D. 211.

(*g*) *Ibid.* s. 54.

Registry of Special Resolutions.—A copy of every special resolution must be printed, and forwarded to the registrar, in order to be recorded by him. If a copy is not forwarded within fifteen days after the confirmation of the resolution, the company will incur a penalty not exceeding 2*l.* for every day afterwards; and a director or a manager will incur a similar penalty.(*a*)

Notices and Legal Proceedings.—Notices, summonses, and other documents may be served by delivering, leaving, or posting the same, in prepaid letters addressed to the company at their registered office.(*b*)

Proof that the documents were posted in time, properly addressed and stamped, will be sufficient.(*c*)

A summons, notice, or other document requiring to be authenticated by the company, may be signed by any director, secretary, or other authorised officer; and it is not necessary to be under the seal of the company, and may be in writing or in print, or partly in writing and partly in print.(*d*)

In actions or suits brought by the company against any member, to recover calls or money due from such member in his character of member, it will not be necessary to set forth the special matter, but it will be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action or suit has accrued to the company.(*e*)

If it appears in such action, by any credible testimony, that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, a judge may require security

(*a*) 25 & 26 Vict. c. 89, s. 53.
(*b*) *Ibid.* s. 62. "Summons" includes writ of summons. *Wood* v. *Anderton Foundry Company*, 36 W. R. 918.
(*c*) 25 & 26 Vict. c. 89, s. 63. See *White* v. *Land and Water Company*, W. N. (1883), 174.
(*d*) *Ibid.* s. 64.
(*e*) *Ibid.* s. 70.

for costs to be given by the company, and stay all proceedings until security is given.(*f*)

The pecuniary penalties imposed by the Act may be summarily recovered before justices of the peace.(*g*)

Examination of Affairs by Inspectors.—An examination into the affairs of a banking company may often be desirable in cases of rumours of losses or delinquencies of directors. The Act gives power to the Board of Trade, or to members, to appoint inspectors for the purpose of examining into and reporting thereon. In the case of the Board of Trade, an application must be made by members holding not less than one-third of the entire shares of the company.(*h*) It must be supported by such evidence as the Board of Trade may require, for the purpose of showing that the applicants have good reason for demanding the investigation, and that they are not actuated by malicious motives in instituting the inquiry. The Board of Trade may require security for costs to be given before appointing the inspectors.(*i*)

It will be the duty of the officers of the company, on the inquiry, to furnish the inspectors with all information in their power, and to produce their books and documents, and the officers may be examined on oath.(*k*)

If an officer should refuse to produce the books or documents, or to answer questions relating to the affairs of the company, he will incur a penalty of not less than 5*l.* for each offence.(*k*)

Upon the conclusion of the examination the inspectors are to report their opinion, which may be either written or printed, to the Board of Trade.(*l*) A copy of the report

(*f*) 25 & 26 Vict. c. 89, s. 69. See *Moscow Gas Company* v. *International Financial Society*, L. R. 7 Ch. 225; *Northampton Coal Company* v. *Midland Waggon Company*, 7 Ch. D. 500. *Pure Spirit Company* v. *Fowler*, 25 Q. B. D. 235.

(*g*) *Ibid.* s. 65.

(*h*) *Ibid.* s. 56.

(*i*) *Ibid.* s. 57.

(*k*) *Ibid.* s. 58.

(*l*) *Ibid.* s. 59.

is to be forwarded by the Board of Trade to the registered office of the company, and to the members at whose instance the inspection was made, if they require it. These persons will have to defray the expenses of the investigation, unless the Board of Trade directs them to be paid out of the assets of the company.(*a*)

In the case of a company being authorised by a special resolution, it may appoint inspectors to examine into the state of its affairs ;(*b*) the inspectors being clothed with the same powers and entrusted with the same duties as the inspectors appointed by the Board of Trade, with this exception, that their report is to be made in such manner and to such persons as the company in a general meeting of its members directs. Their officers will incur similar penalties by refusing to produce books or documents, or to answer questions, as under an examination conducted by the inspectors of the Board of Trade.(*b*)

A copy of the report, authenticated by the seal of the company, will be admissible in legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.(*c*)

(*a*) 25 & 26 Vict. c. 89, s. 59.
(*b*) *Ibid.* s. 60.
(*c*) *Ibid.* s. 61.

CHAPTER XLV.

CHARTERED BANKS.

BANKS may be formed under the 7 Will. 4 & 1 Vict. c. 73, by Royal charters or letters patent. The charters are obtained by petitioning the Queen in Council. The petition and draft of the proposed charter are left at the Council Office and afterwards referred to the Board of Trade. The Colonial Office and India Office are also referred to if the proposed company falls within their departments. If it is determined that a charter shall be granted, it issues under the Great Seal.(*d*) The liability of the members is usually limited by the letters patent to the amount of their respective shares,(*e*) and legal proceedings by or against the companies are directed to be taken and prosecuted in the name of a public officer appointed for the purpose.(*f*) Previously to an application to the Board of Trade for a charter, notices must be inserted in the *Gazette* and other newspapers.(*g*) By the Chartered Companies Act, 1884,(*h*) these charters may be renewed or extended. A bank incorporated under this Act cannot be registered under the Companies Act of 1862 as an unlimited company,(*i*) or, when registered as a limited company, alter any provision contained in the letters patent relating to the company, without the sanction of the Board of Trade.(*k*) Of recent years it has not been the policy or the practice of the Government to advise the Queen to grant charters for the establishment of banking companies in the Colonies or in India, preferring to leave these matters to the free action of the Colonial or Indian Governments themselves.

7 Will. 4 & 1 Vict. c. 73.

(*d*) See sections 2 and 32.
(*e*) 7 Will. 4 & 1 Vict. c. 73, s. 4.
(*f*) *Ibid.* s. 3.
(*g*) *Ibid.* s. 32.
(*h*) 47 & 48 Vict. c. 56.
(*i*) 25 & 26 Vict. c. 89, s. 179.
(*k*) *Ibid.* s. 196.

CHAPTER XLVI.

IRISH AND SCOTCH BANKS.

With respect to Irish banks, the 6 Geo. 4, c. 42, which is still in force as to banking copartnerships or societies established in Ireland under its provisions, enables them to sue and to be sued in the names of their public officers, and requires a return of their members to be made to the Inland Revenue. That Act has not repealed the Act of the Irish Parliament, 33 Geo. 2, c. 14.(*a*) The Irish Act does not relate exclusively to persons carrying on the business of banking in the way of banks of issue, but to all bankers in Ireland.(*b*) A memorandum accompanying a deposit of deeds made as a security for a debt, and made by a person carrying on the ordinary business of a banker is within the statute, and ought to be registered to be available as against creditors under a trust deed executed pursuant to the provisions of the Act.(*b*) A deposit of deeds as security for a debt, accompanied by a memorandum specifying the purpose of such deposit, constitutes a conveyance under that statute, and might, and ought to, have been registered, even though the stoppage of payment by the banker took place within one month after its date.(*b*)

(*a*) Contrary to the opinion of Lord St. Leonards, expressed in *O'Flaherty* v. *M'Dowell*, 6 H. L. Cas. 185. *Copland* v. *Davies*, 3 Ir. Eq. R. 31; L. R. 5 H. L. Cas. 358; 21 W. R. 1. The Act is unrepealed, except as to such specific matters contained in it as have been the subject of special legislation. The most important of the previous Acts of Parliament affecting banking institutions in Ireland are the 8 Geo. 1, c. 14; 33 Geo. 2, c. 14; 21 & 22 Geo. 3, c. 16; 40 Geo. 3, c. 22; 1 & 2 Geo. 4, c. 72; and 5 Geo. 4, c. 73. The provisions of the 1 & 2 Vict. c. 96, made perpetual by 5 & 6 Vict. c. 85, apply to banking copartnerships established in Ireland under the 6 Geo. 4, c. 42. Where judgment was obtained in Ireland against a public officer, a warrant of attorney, under 6 Geo. 4, c. 42, s. 12, to confess judgment in England for a less sum than that for which judgment was obtained in Ireland, is a nullity. *Walker* v. *M'Dowall*, 3 Jur. (N.S.) 1078. The 6 Geo. 4, c. 42, above mentioned, is similar to the 7 Geo. 4, c. 46, regulating English banking copartnerships.

(*b*) *Copland* v. *Davies*, *supra*.

The 8 & 9 Vict. c. 37, s. 30, enables banking companies established within fifty miles of Dublin to sue and to be sued in the name of their public officer.

The 7 Geo. 4, c. 67, s. 1, enables banking copartnerships established in Scotland to sue and to be sued by public officers, and the returns of the names of their firms, members and officers are required to be made to the Stamp Office by these copartnerships. An omission to make these returns does not, however, disentitle them to sue in this country.(*c*)

In 1846, the provisions of the 7 & 8 Vict. c. 113, giving the Crown powers to grant letters patent of incorporation to English joint stock banks for a term of years not exceeding twenty, were extended by the 9 & 10 Vict. c. 75, to both Irish and Scotch joint stock banks.

Subsequently the 19 & 20 Vict. c. 3, further extended the provisions of the English statute in favour of Scotch joint stock banks existing before the 9th of August, 1845, by enabling the Crown to grant to them letters patent of incorporation, in perpetuity, in lieu of a limited maximum of twenty years only. But by 17 & 18 Vict. c. 73, s. 1, banks formed under these Acts, as to Scotland, the right of retention or lien over shares of partners was not to be affected, and banks must, by section 2, within six months, sell shares acquired by virtue of lien. By section 3, bills or notes were not to be signed in the manner prescribed by the 7 & 8 Vict. c. 113. In 1857, banks, which had been formed in Scotland or in Ireland under these statutes, were required by the 20 & 21 Vict. c. 49, to register under that Act, and, in default of registration, they were subject to certain penalties and disabilities.(*d*) That Act also repealed the 9 & 10 Vict. c. 75, and prohibited the future formation of banking companies either in Scotland or in Ireland, except under its provisions. In 1858, limited banking companies might be formed in Scotland or in Ireland under the 21 & 22

(*c*) *Bonar* v. *Mitchell*, 5 Ex. 415; 19 L. J. Ex. 302.
(*d*) 20 & 21 Vict. c. 49, s. 5.

Vict. c. 91. In 1862 this Act was repealed by the Companies Act of that year.(*a*) The latter Act imperatively requires banking companies, formed under the provisions of the repealed Act, to register under the new Act.(*b*)

The issue of bank notes in Ireland is regulated by the 8 & 9 Vict. c. 37, and in Scotland by the 8 & 9 Vict. c. 38, as already mentioned.(*c*)

As the provisions of the Act for the formation, regulation and registration of banking companies of limited or unlimited liability in Scotland and in Ireland are the same as in England, it will be only necessary to refer the reader to the previous Chapters on these subjects.

(*a*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, First Part.
(*b*) Sections 180, 209, 210.
(*c*) *Ante*, p. 330. The statute is set out in the Appendix.

CHAPTER XLVII.

COLONIAL, INDIAN, AND FOREIGN BANKS.

BANKING institutions are generally established in the colonies and in India by virtue of charters from the Crown, or under the authority of local laws, corresponding in a great measure with the English laws on the subject. By an Act of a colonial legislature, it was provided that a banking company should sue and be sued in the name of its chairman, and that execution on any judgment against the company might be enforced against the property of any member for the time being, in like manner as if the judgment had been obtained against such member personally. In an action against a member in this country, on a judgment obtained in the colony against the chairman, it was decided that the colonial legislature had authority to pass the Act, and that there was nothing repugnant to the laws of England or to natural justice in enacting that actions on contracts made by the company in the colony, instead of being brought against the members individually, should be brought against the chairman whom they had appointed to represent them, and that a judgment recovered in such an action, after service of process on the chairman, had the same effect beyond the territorial limits of the colony which it would have had if the defendant had been personally served with process, and, he being a party to the record, the judgment had been personally against him.(*d*)

So, by an Act of the Indian legislature, a banking company established at Calcutta might be sued in the name of its secretary, and a judgment against him was to

(*d*) *Bank of Australasia* v. *Nias*, 16 Q. B. 717; *Bank of Australasia* v. *Harding*, 9 C. B. 661. See *Henderson* v. *Henderson*, 6 Q. B. 288; *De Cosé Brissac* v. *Rathbone*, 6 H. & N. 301.

have the same effect against the property of the bank as if recovered against all the members as parties on the record; and it was provided that, if an execution issued against the property of the bank proved ineffectual, execution should issue against the members successively, and if that were also ineffectual, then against any person who was a member at the time when the contract sued upon was entered into, but no execution was to be issued against any other person than the actual party to the suit without the leave of the Court and notice given to the person to be charged; a creditor, having recovered a judgment in India against the secretary of the bank for a breach of contract entered into by the company there, took no further proceedings in India, but immediately brought an action against a member who was so at the time the contract was entered into, and recovered judgment in this country on the judgment and the contract, and it was held that he was entitled to do so, and to recover in respect of both causes of action.(*a*) "It has been urged," said the Court in delivering judgment, "that, when the defendant consented to be bound by a judgment recovered, not against himself in his own name, but against another who represented him, he should be considered as having consented only on condition that proceedings on the judgment were pursued in the manner appointed by the Act. But he must have known that that Act would have no effect in this country. He, therefore, consented to be sued in the name of the public officer in India, and to be liable to all the consequences which might arise out of it in this country."(*b*)

The production of bankers' books with the entries of the items constituting the demand, kept according to the established custom of mahajuns in India, is not of itself sufficient evidence to establish such a claim, strict proof of the debt being required.(*c*)

(*a*) *Kelsall* v. *Marshall*, 1 C. B. (N.S.) 241; 26 L. J. C P. 19.
(*b*) *Ibid.*; 26 L. J. C. P. 23, per CRESSWELL, J.
(*c*) *Rai Sri Kishen* v. *Rai Huri Kishen*, 5 Moore, Ind. App. 432.

A banking company incorporated by charter, which contained a clause declaring that it should not be lawful for the company to advance money on the security of merchandise, advanced money on the faith of receiving as security a preferential lien on the wool of an ensuing clip to be shorn from the sheep of the party in whose favour the advances were made, but who was not in the actual possession of the sheep, though a part owner of the sheep and the agent of the other owners for whose benefit the advances had been made: the Privy Council held, in an action of trover by the company on such agreement giving them a preferable lien, that it was maintainable, and that the banking company were entitled to recover for the value of the wool on such preferential lien.(*d*)

With regard to foreign banks, they are entitled to sue in this country by the name by which they are incorporated or known, or in the manner prescribed by the laws of the country in which they are established.(*e*) Foreign banks frequently have agencies in this country for the negotiation or payment of their bills or notes.

(*d*) *Ayer* v. *South Australian Banking Company*, L. R. 3 P. C. 548; 40 L. J. C. P. 22.

(*e*) *National Bank of St Charles* v. *De Bernales*, R. & M. 191; 1 C. & P. 569; *La Banca Nazionale Sede di Torino* v. *Hamburger*, 2 H. & C. 330; 11 W. R. 1074.

CHAPTER XLVIII.

BRANCH BANKS.

By the deed of settlement or articles of association, powers are usually reserved to the directors to establish branch banks in different parts of the country, or of the world.

A banking company was established in 1836, by a deed which provided that the business of the company should be carried on at Douglas, in the Isle of Man, and such other places as might afterwards be chosen with the consent of all the directors. In 1839, a branch bank was established at Castle Town, which continued until 1843, when an action was brought against a shareholder, who had executed the deed of 1836, to recover a sum of money deposited with it: it was held, that it might be presumed, either that the branch bank had been established in compliance with the provisions of the deed, or that the shareholder knew of, and was a consenting party to, carrying on business at the branch.(*a*)

A limited banking company having branches must affix or put up in a conspicuous part of these branches a copy of the statement of its capital, assets, and liabilities as required by the Companies Act, 1862, s. 44.(*b*)

The position of branch banks is that, in principle and in fact, they are agencies of one principal corporation or firm, notwithstanding that they may be regarded as distinct for special purposes, as, for instance, that of estimating the time at which notice of dishonour should be given, or of entitling a banker to refuse payment of a customer's cheque except at that branch where he keeps his account.(*c*)

(*a*) *Crellin* v. *Calvert*, 14 M. & W. 11; 14 L. J. Ex. 375.
(*b*) See *ante*, p. 414.
(*c*) *Prince* v. *Oriental Bank Corporation*, 3 App. Cas. 325; 47 L. J. P. C. 42.

The following cases will illustrate this rule :—The holder of a promissory note presented it at the head office of the bankers of the makers for payment. They sent it to their branch at the place where the note was payable, where the clerk cancelled the signature, wrote "paid" on the note, and transmitted a draft in respect of it to the head office : Held, that the head office and branch were for this purpose one and the same bank, that the act of the clerk in transmitting the draft did not of itself operate to charge the bank with money had and received to the use of the holder.*(c)* But where a bill of exchange was endorsed to a branch bank of the National Provincial Bank of England established at Port Madoc, who sent it to another branch establishment at Pwllheli, who indorsed it to the head establishment in London : it was held, in an action upon the bill by the indorsee against the drawer, that each of the branch banks was to be considered as an independent indorsee, and each entitled to notice of dishonour.*(d)*

So, where there was a banking company having branches at many places, amongst others at Glastonbury and Bridgwater, and each branch had a separate manager, and kept separate accounts with its respective customers, whom each supplied with cheque books headed with the name of the place at which it respectively carried on business, and a customer, who kept an account with the Glastonbury branch, made a payment of a debt, which he owed the defendant, by giving him a cheque for the amount of it on that branch, which he presented the same day at the Bridgwater branch, where he was known and where he got cash for it, and it was sent by that branch by the first post to the former branch, and delivered to them next day, but in the meantime the customer's balance with them had been drawn out, and the cheque was accordingly refused payment, and notice of dishonour given to the defendant,

(d) *Clode* v. *Bayley*, 12 M. & W. 51 ; and *Brown* v. *London and North Western Railway Company*, 4 B. & S. 333, 337.

who was obliged to refund in an action for money had and received brought against him by the public officer of the banking company; it was held that the drawer of the cheque did not stand in the relation of customer to the Bridgwater branch, that the giving cash for the cheque did not amount to a purchase of the cheque by that branch, but only amounted to changing it, and that the cheque was not drawn on the company generally.(*a*)

In the absence of any special agreement or arrangement there is no obligation on a banking company to honour the cheque of a customer presented at one of its branches where he has a balance standing to his credit, when he has overdrawn his account at another branch to an amount greater than such balance, so that the company is not in fact indebted to him upon the whole account. Neither is there any obligation on a banker to give notice to his customer, that he intends to transfer a balance against the customer from an account at one branch to an account at another branch.(*b*)

Where a firm paid a cheque into a branch bank in India to their current account after the stoppage of the parent bank in England, but before the branch had any notice of the stoppage, and afterwards, on the same day, the branch received notice of the stoppage of the bank in England, and stopped itself, an application by the firm to be paid the amount of the cheque was refused; but permission was given for a renewal of the application, if the firm should find that the cheque had not been cashed until after the branch had received notice of the stoppage of the bank in England.(*c*)

The subject of branch banks established by the Bank of England has already been considered.(*d*)

(*a*) *Woodland* v. *Fear*, 7 El. & Bl. 519; 26 L. J. Q. B. 202.
(*b*) *Garnett* v. *M'Kewan*, 42 L. J. Ex. 1; L. R. 8 Ex. 14; *ante*, p. 198.
(*c*) *In re Agra and Masterman's Bank, Ex parte Waring*, 36 L. J. Chanc. 151; W. N. (1866), p. 399.
(*d*) *Ante*, p. 307. As to right of lien where several accounts are kept at different branches, see *ante*, p. 250.

CHAPTER XLIX.

SHARES, CALLS, AND SHAREHOLDERS.

Nature of Property.—The shares of the members of banking copartnerships or companies, whether formed under deeds of settlement or under articles of association, are personal property, and are generally subject to all the legal incidents which attach to personal property.(*e*)

The shares of a banking copartnership, established in conformity with the 7 Geo. 4, c. 46, the property of which consisted in part of freehold and of copyhold estates, and mortgages for terms of years, have been held, both at law(*f*) and in equity,(*f*) to be personalty and not realty, and to be legally bequeathable to charitable purposes, within the Mortmain Act, 9 Geo. 2, c. 36. The shares or interests of members in companies formed under the Companies Act, 1862, are expressly declared to be personal estate, transferable in the manner provided by the regulations of the companies, and not real estate.(*g*) The shares in all banking copartnerships are usually numbered, as they should be before being issued or allotted by limited banking companies;(*g*) and the shares are represented by certificates corresponding with the numbers and amounts of the shares.

A. purchased some shares in a banking company, and had them transferred into the joint names of herself and B. B. survived A., and there was clear evidence to show

(*e*) As to equitable mortgages of shares, see *ante*, p. 149, *et seq.*

(*f*) *Myers* v. *Perigall*, 2 De G. Mac. & G. 600; 11 C. B. 90; *Ashton* v. *Lord Langdale*, 4 De Gex & Sm. 402. It is otherwise in the case of an ordinary partnership holding lands. *Ashworth* v. *Munn*, 15 Ch. D. 368. See further as to the nature of shares. *Zuccani* v. *Nacupai Gold Company*, 60 L. T. 23; *Morrice* v. *Aylmer*, L. R. 10 Ch. 155; *Bank of Hindustan* v. *Alison*, L. R. 6 C. P. 74; *In re Bridgwater Navigation Company*, 14 App. Cas. 543; *Colonial Bank* v. *Whinney*, 11 App. Cas. 426.

(*g*) 25 & 26 Vict. c. 89, s. 22.

that A. intended the shares for B. absolutely. By the regulations of the company, however, there was no benefit of survivorship between shareholders. It was nevertheless held that the legal title was complete in B., and that she was entitled to them by survivorship.(*a*)

Shares in a limited company can be sold by order of the Court as coming within the words "goods, wares or merchandise" of Order L., rule 2.(*b*)

Agreement to take Shares.—To constitute a binding agreement to take shares in a company when such contract is based upon application and allotment, it is necessary that there should be an application by the intending shareholder, an allotment by the directors of the company of the shares applied for, and a communication by the directors to the applicant of the fact of such allotment having been made.(*c*)

An application for shares does not require to be in writing,(*d*) and may be withdrawn at any time before acceptance is notified to the person making the application. Where the acceptance is to be sent by post the contract becomes binding from the time it is posted.(*e*) A withdrawal of an application for shares may be made orally.(*f*)

Shares issued at a Discount.—It is impossible to issue shares at a discount so as to render the holder not liable to

(*a*) *Garrick* v. *Taylor*, 29 Beav. 79; 30 L. J. Ch. 211; affirmed on appeal, 31 L. J. Ch. 68. See *Hill's Case*, L. R. 20 Eq. 585; *Batstone* v. *Salter*, 44 L. J. Ch. 209, 760; *Law Guarantee Trust Society* v. *Bank of England*, 38 W. R. 493. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share. (Table A., Art. 1.)

(*b*) *Evans* v. *Davies* (1893), 2 Ch. 216.

(*c*) Per BAGGALLAY, L.J., in *In re Scottish Petroleum Company*, 23 Ch. D. 413, 430; 50 L. J. Ch. 269; *Re Universal Banking Company*, L. R. 3 Ch. 633.

(*d*) *Levita's Case*, L. R. 3 Ch. 36; *Ex parte Bloxam*, 33 Beav. 529. On appeal, 33 L. J. Ch. 574.

(*e*) *Dunlop* v. *Higgins*, 1 H. L. C. 381; *Hebb's Case*, L. R. 4 Eq. 9; *Ritso's Case*, 4 Ch. D. 782; *Household Fire Insurance Company* v. *Grant*, 4 Ex. D. 216.

(*f*) *Wilson's Case*, 20 L. T. 962; *Truman's Case* (1894), 3 Ch. 272.

pay the nominal amount thereof in full,(*g*) and if the consideration payable for shares issued by a company is illusory, or permits an obvious money measure to be made showing that discount has been allowed, filing the contract under which the shares were issued with the Registrar of Joint Stock Companies under the Companies Act of 1867, section 25 will not relieve the allottee from having to pay the nominal value of the shares, or the amount of the discount, in cash; but the Court is not bound to enquire in each case whether the price was reasonable, or whether what was given for the shares had a cash value in the market, equal to the nominal value of the shares.(*h*)

Purchase or Sale of Banking Shares.—By 30 Vict. c. 29, s. 1, a contract or an agreement for the sale or transfer of shares in any joint stock banking company in the United Kingdom, constituted under or regulated by the provisions of any Act of Parliament, Royal charter, or letters patent, issuing shares or stock transferable by deed or written instrument, will be null and void, unless the contract or agreement shall set forth and designate in writing such shares or stock by the respective numbers by which they are distinguished, at the making of the contract or agreement, on the register or books of the banking company, or where there is no such register of shares or stock by distinguishing numbers, then unless the contract or agreement shall set forth the person or persons in whose name or names such shares or stock shall at the time of making the contract stand as the registered proprietor thereof in the books of the banking company; and every person, whether principal, broker, or agent, who wilfully inserts in the contract or agreement any false entry of the numbers of the shares or stock, or any name or names

Leeman's Act.

(*g*) *In re Railway Time Tables Publishing Company* (1895), 1 Ch. 255; *In re Almada Company*, 38 Ch. D. 415; *In re Weymouth and Channel Company* (1891), 1 Ch. 66; *Hirsche* v. *Sims* [1894], A. C. 654.

(*h*) *In re Theatrical Trust, Chapman's Case* (1895), 1 Ch. 771.

other than that of the person or persons in whose name they stand, will be guilty of a misdemeanor.

Joint stock banking companies are bound to show their list of shareholders to any registered proprietor during business hours, from ten to four o'clock. These provisions do not apply to shares or stock of the Bank of England or of Ireland.(a)

The defendant A. instructed the plaintiffs, stockbrokers of Bristol, to purchase for him shares in a joint stock banking company on the London Stock Exchange. The plaintiffs gave directions accordingly to their London agents, brokers on the London Stock Exchange, who purchased the shares from jobbers on the Stock Exchange in the usual way, without having in the contract distinguishing numbers of the shares, it not being the practice on the London Stock Exchange to specify the numbers, or otherwise to comply with 30 Vict. c. 29 (Leeman's Act), s. 1. By the rules of such Stock Exchange it is provided that the Stock Exchange shall not recognise in its dealings any other persons than its own members; such members, if they do not carry out contracts, being liable to be expelled from the Stock Exchange, and that no application to annul a contract shall be entertained by the committee of the Stock Exchange, unless upon a specific allegation of fraud or wilful misrepresentation. Before the settling day, the defendant repudiated the contract, but the committee of the Stock Exchange refused to annul the contract, and, therefore, the plaintiffs completed it, and paid the price of the shares. *The defendant was ignorant of the usage of the London Stock Exchange* with regard to dealings in shares of banking companies, and did not know that the purchasing broker was by such usage bound to perform a contract for the purchase of banking shares, though void at law under Leeman's Act: Held, affirming the decision of GROVE, J., that the plaintiffs were not entitled to recover from the defendant

(a) Sections 2 and 3.

the money paid by them, as the price of the shares, since the usage of the Stock Exchange to disregard Leeman's Act, and to recognise as valid a contract which was made contrary to that Act, was unreasonable as against strangers who did not know it, and, therefore, was not binding on the defendant.(b)

The following case, however, will show that no such right of repudiation exists where knowledge of this usage of the Stock Exchange can be shown :—

The defendant employed the plaintiffs, who were stock-brokers on the Stock Exchange, to buy shares in a joint stock banking company. He had on many previous occasions employed the plaintiffs to buy similar shares, and on none of those occasions did the contract or advice note forwarded to him specify the distinguishing numbers of the shares purchased. The plaintiffs purchased the shares from a jobber on the Stock Exchange in the usual way, and forwarded to the defendant a contract note in the usual form, stating that the contract was made subject to the rules and regulations of the Stock Exchange. The contract was not made with reference to any distinguishing numbers of the shares, nor did the contract note specify any numbers. It is not the practice on the Stock Exchange to specify the numbers of the shares in dealing in bank shares. The defendant, before the settling day, wrote to the plaintiffs repudiating the contract, on the ground that the numbers of the shares were not specified pursuant to 30 Vict. c. 29, s. 1. Notwithstanding such repudiation, the plaintiffs completed the contract and paid for the shares. The plaintiffs sued the defendant to recover the price of the shares paid by them. Held, by MATHEW, J., that the plaintiffs were entitled to recover.(c)

Rescission of Contract to take Shares on the Ground of Misrepresentation—A person, who has been induced to take shares in a company by a misrepresentation of a

(b) *Perry* v. *Barnett*, 15 Q. B. D. 388.
(c) *Seymour* v. *Bridge*, 14 Q. B. D. 460.

matter of fact contained in the prospectus or any other document forming the basis of the contract, may rescind his contract ;(*a*) and where such a misrepresentation is proved, then, however honestly it may have been made, and however free from blame the person who made it may be, the contract cannot stand(*b*) (for in this respect an action to obtain a rescission differs essentially from an action of deceit), and the Courts are bound, if he comes within a reasonable time, to relieve him from it and to take his name off any list of shareholders on which it may have been put.(*c*)

For the purposes of an action for rescission of a contract to take shares, a misrepresentation by its directors is a misrepresentation by the company ; and where the directors, in the name of the company, seek to enforce that contract, or the person who has been deceived institutes a suit against the company to rescind the contract on the ground of misrepresentation or fraud, the purchaser cannot be held to his contract, because a company cannot retain any benefit which they have obtained through the fraud or misrepresentation of their agents.(*d*)

There must, however, be a mis-statement of an existing fact ; but a mis-statement of a person's intention may amount to such a mis-statement.(*e*) On the other hand, a mere highly-coloured wording of the prospectus would not be sufficient to entitle a person who has taken shares on the faith of it to rescind if there is, in fact, no material misrepresentation.(*f*)

(*a*) *Arkwright* v. *Newbold*, 17 Ch. D. 320; *Reese Silver Mining Company*, L. R. 2 Ch. 615: *Venezuela Railway Company* v. *Kisch*, L. R. 2 H. L. 99; *Stone* v. *City and County Bank*, 3 C. P. D. 282; 47 L. J. C. P. 681 ; *Oakes* v. *Turquand*, L. R. 2 H. L. 325.

(*b*) *Derry* v. *Peek*, 14 App. Cas. 359.

(*c*) See *Reese Silver Mining Company*, *supra*.

(*d*) *National Exchange Company* v. *Drew*, 2 Macq. 124 ; *Western Bank of Scotland* v. *Addie*, L. R. 1 Sc. App. 158 ; *Karberg's Case* [1892], 3 Ch. 1. As to misrepresentation by agents, see *Lynde* v. *Anglo-Italian Spinning Company* [1896], 1 Ch. 178.

(*e*) *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 360 ; *Edgington* v. *Fitzmaurice*, 29 Ch. D. 483.

(*f*) *Denton* v. *Macneil*, L. R. 2 Eq. 352. A person is only entitled to rescind on the ground of *non-disclosure* where the facts not disclosed are

A contract induced by misrepresentation being voidable and not void, and the contract remaining valid till rescinded, the person seeking to rescind it must do so promptly and as soon as he becomes acquainted with the facts upon which he relies, otherwise he will lose his right to relief.(*g*) Mere repudiation is not sufficient, actual steps must be taken to have his name removed.(*h*) In considering how far a winding up of the company is a bar to such relief, "the repudiating shareholder must not only repudiate, but also get his name removed, or commence proceedings to have it removed, before the winding up; but this rule is subject to the qualification that, if one repudiating shareholder takes proceedings, the others will have the benefit of them if, but only if, there is an agreement between them and the company that they shall stand or fall by the result of those proceedings, but not otherwise."(*i*)

A shareholder dealing with his shares, after discovering the fraud or misrepresentation, is taken thereby to elect to affirm the contract and is estopped from afterwards repudiating it.(*k*)

Transfer of Shares.—Every shareholder has a right to transfer the shares he holds, though the right is subject to the regulations of the company.(*l*) By the regulations of most banking copartnerships, the consent of the directors is necessary before a shareholder can transfer his shares to a purchaser.(*m*) In the case of a sale of shares

such that the omission to disclose them renders the prospectus, as it stands, misleading. *McKeown* v. *Boudard Peveril Gear Company* [1896], W. N. 36.

(*g*) *Sharpley* v. *Louth and East Coast Railway Company*, 2 Ch. D. 685; *Reese Silver Mining Company*, *ante*; *Peek* v. *Gurney*, L. R. 13 Eq. 79.

(*h*) *Hare's Case*, L. R. 4 Ch. 503; *Re Scottish Petroleum Company*, 23 Ch. D. 412; 50 L. J. Ch. 269. See further as to delay, *Ogilvie* v. *Currie*, 37 L. J. Ch. 541; *Taite's Case*, L. R. 3 Eq. 95; *Central Railway of Venezuela* v. *Kisch*, *ante*.

(*i*) Per LINDLEY, L.J., in *In re Scottish Petroleum Company*, *supra*, p. 437.

(*k*) *Nicol's Case*; *Re Royal British Bank*, 3 De G. & J. 431; *Ex parte Briggs*, L. R. 1 Eq. 483.

(*l*) *Re Cawley and Company*, 42 Ch. D. 209, 231.

(*m*) *Ex parte Walton*, 26 L. J. Ch. 545, 548. Where the consent of the directors is required it must not be improperly withheld. *Robinson* v.

according to the custom of the Stock Exchange, the seller does not impliedly undertake that the directors shall accept the purchaser as a transferee.

A contract for the sale of shares in a registered company was made through brokers upon and subject to the rules of the Stock Exchange. In accordance with the practice of the Stock Exchange, the transferee of the shares paid the price of them to the vendor upon delivery to him of a duly executed transfer. An application for registration of the transfer being subsequently made to the directors of the company, who were empowered by the articles of association, in their discretion, to decline to register a person claiming by transfer of shares, they refused to register the transferee as a member of the company. The transferee thereupon brought an action to recover back the price of the shares from the vendor as money had and received to his use:—Held, following *Stray* v. *Russell* (1 E. & E. 888, 917), that the contract for the sale of shares on the Stock Exchange did not import an undertaking by the vendor that the company would register the transferee, and that the action was not maintainable.(*a*)

Where a particular form of transfer is prescribed by a company's regulations a shareholder will only cease to be a shareholder by adopting that form of transfer,(*b*) unless, notwithstanding any informality, the company has recognised and treated the transferee as a shareholder.(*c*)

The 7 Geo. 4, c. 46, does not prescribe any form of transfer of shares. Shares in copartnerships established

Chartered Bank of India, L. R. 1 Eq. 32. See *Ex parte Penney*, L. R. 8 Ch. 446. *Slee* v. *International Bank*, 17 L. T. 425; *Ex parte Hodgson*, 65 L. T. 245; *Moffat* v. *Farquhar*, 7 Ch. D. 605; and see *post*, p. 455.

(*a*) *London Founders Association* v. *Clarke*, 20 Q. B. D. 576.

(*b*) *Bargate* v. *Shortridge*, 5 H. L. Cas. 312; *McEwen* v *West London Wharves Company*, L. R. 6 Ch. 655; *Simm* v. *Anglo-American Telegraph Company*, 5 Q. B. D. 216; *Societé Générale de Paris* v. *Tramways Union Company*, 14 Q. B. D. 451.

(*c*) *Murray* v. *Bush*, L. R. 6 H. L. 37; 42 L. J. Ch. 586; *Watson* v. *Eales*, 26 L. J. Ch. 361; *Bargate* v. *Shortridge*, *supra*; *In re Royal British Bank*, 26 L. J. Ch. 545.

under the provisions of that statute are transferable only according to the particular mode pointed out by the deeds of settlement.(*d*) Shares in banking companies, formed under the 7 & 8 Vict. c. 113, are transferable by a deed duly stamped, and in a given form, as already shown.(*e*) Shares in banking companies, formed or registered under the 20 & 21 Vict. c. 49, or the 21 & 22 Vict. c. 91, on registration under the Companies Act of 1862, are transferable in the manner hitherto in use, or in such other manner as the companies may direct.(*f*) But shares in limited banking companies, formed and registered under the Companies Act of 1862, are transferable according to the regulations prescribed by the articles of association. The form usually prescribed is a deed attested by witnesses.

Death of Shareholder.—Executors of a deceased holder, so long as the shares remain untransferred, are liable to be made contributories *as executors*, and are also liable *as executors* for calls in respect of the shares held by the deceased.(*g*)

Executors.—An executor has two courses open to him: he may either have the testator's shares transferred into his own name, in which case he becomes a shareholder, or he may sell them, a reasonable time being allowed him wherein to find a buyer.(*h*)

By the Companies Act, 1862, s. 24, also, it is enacted that a transfer of a deceased member's share in a company formed under that Act, made by his personal representative, is to be of the same validity as if he had been a member at the time.(*i*)

Persons who may take Shares—Married Women.—Unless there is anything in the company's deed of settlement or

(*d*) *Bosanquet* v. *Shortridge*, 4 Exch. 699.
(*e*) *Ante*, p. 384.
(*f*) 25 & 26 Vict. c. 89, s. 178.
(*g*) *Baird's Case*, L. R. 5 Ch. 725; *Houldsworth* v. *Evans*, L. R. 3 H L. 263. See 25 & 26 Vict. c. 89, s. 76, and Table A. (12).
(*h*) *Buchan's Case; City of Glasgow Bank*, 4 App. Cas. 588.
(*i*) *In re London and Provincial Telegraph Company*, L. R. 9 Eq. 653.

constitution to exclude married women from becoming shareholders, a married woman may take shares therein.(*a*) Every contract entered into by a married woman is now deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract; and such contract shall bind all separate property which she may at that time or thereafter be possessed of or entitled to, and shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to, except separate property, which she is restrained from anticipating.(*b*)

Infants.—An infant who takes shares in a company may subsequently repudiate the contract, even though a call has been made; but if on attaining his majority he does not so repudiate it within a reasonable time, he will, notwithstanding the Infants Relief Act, 1874 (37 & 38 Vict. c. 62), be bound thereby.(*c*) It is, however, competent for a company to avoid a transfer of shares to an infant, and the Court will not compel it to register it.(*d*)

Partners.—There is no power in one partner, in the absence of special authority from his copartners, or evidence of a special course of dealing, to accept shares in a company, even though fully paid up, in satisfaction of a debt due to the firm.(*e*) Where he has authority to lend money on shares, and shares are transferred to him by way of security, his partners will be bound as contributories in the event of a winding up of the company, as they thereby become shareholders.(*f*)

(*a*) *Re Leeds Banking Company; Mathewman's Case*, 3 Eq. 781; and see Married Women's Property Act, 1882 (45 & 46 Vict. c. 75).

(*b*) Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.

(*c*) *Whittingham* v. *Mundy*, 60 L. T. 959; *North Western Railway Company* v. *MacMichael*, 6 Ex. 273.

(*d*) *Gooch's Case*, L. R. 8 Ch. 266; *Reg.* v. *Midland Counties Railway Company*, 15 Ir. C. L. R. 504.

(*e*) *Niemann* v. *Niemann*, 43 Ch. D. 198.

(*f*) *Weikersheim's Case*, L. R. 8 Ch. 831.

Companies.—A trading company may take shares in other companies if expressly or impliedly authorised to do so by its memorandum and articles of association. A corporate body is a "person" within the meaning of the Companies Acts.(*g*) Where no such authority exists it cannot acquire shares by taking them in the name of a nominee and obtaining from him a transfer to itself.(*h*) A company cannot purchase its own shares.(*i*)

Trustee.—A trustee holding shares in a company is personally liable, though he has a right of indemnity against his *cestui que trust.*(*k*)

Spiritual Persons.—With regard to persons who may be members of banking companies, the trade or business of banking was held to be within the 57 Geo. 3, c. 99, which restrained spiritual persons from being occupied in any trade or dealing; and in the case of *Hall* v. *Franklyn*,(*l*) this disability was held to extend to banking copartnerships under 7 Geo. 4, c. 96, in which two of the partners happened to be clergymen.

Contracts with banking copartnerships, however, of more than six persons were rendered valid, although there might be clergymen among the shareholders or partners, by an Act(*m*) which was shortly afterwards repealed, but was substantially re-enacted by the 4 Vict. c. 14, by which clergymen may be members, partners, or shareholders in these copartnerships, but cannot be directors or managers, or take part in person in the business. But the law

(*g*) *Re Barned's Banking Company*, L. R. 3 Ch. 112; *Royal Bank of India's Case*, L. R. 4 Ch. 252.

(*h*) *Re European Assurance Society*, 48 L. J. Ch. 118.

(*i*) *Trevor* v. *Whitworth*, 12 App. Cas. 409. See also *In re Denver Hotel Company* [1893], 1 Ch. 495; *British and American Trustee Corporation* v. *Couper* [1894], A. C. 399.

(*k*) *Lumsden* v. *Buchanan*, 4 Macq. H. L. 950; *Ex parte Challis; Re Universal Banking Company*, W. N. (1868), 63.

(*l*) 3 M. & W. 259, 268. The 57 Geo. 3, c. 99, was repealed by 1 & 2 Vict. c. 106, s. 1; but the prohibition against clergymen trading is re-enacted by section 29.

(*m*) 1 Vict. c. 10.

remains the same with regard to the disability of clergymen being partners in private banks.

Refusal to Register.—A share certificate of ownership issued by a company estops the company from afterwards denying that the person named in the certificate is the owner of the shares. A. bought from B. 4,300 shares in a company upon the faith of a share certificate issued by the company, certifying that B. was the registered owner of 4,300 specified shares in the company. A. then tendered to the company a transfer from B. to himself duly executed, together with B.'s share certificate; but the company, having recently discovered that the certificate had been fraudulently obtained, refused to register the transfer:—Held, by the Court of Appeal (affirming the judgment of Stirling, J.), (1), that, although the certificate was not a warranty of title upon which A. could maintain an action at common law against the company, it estopped the company from disputing A.'s right to be registered. (2) That A.'s cause of action arose from the refusal of the company to perform the duty of registering a transferee who had shown what the company were estopped from denying to be a good title. (3) That the measure of damages was the value of the shares at the time of the refusal to register.

Estoppel by issue of certificate.

The directors of a company are entitled to a reasonable time for the consideration of every transfer before they register it, although not expressly empowered in that behalf by the articles of association.(a)

Calls.—The deed of settlement constituting a banking company, and the articles of association, provide for the making of calls by the directors. The particular provisions in this respect should be strictly observed, or otherwise the calls may be invalid and incapable of being enforced, for

(a) *In re Ottos Kopje Diamond Mines* [1893], 1 Ch. 618; *Balkis Consolidated Company* v. *Tomkinson* [1893], A. C. 396. See further as to refusal to register, *post*, p. 455.

"directors can only make calls at such times, after such notices and of such amounts, as are prescribed in the articles of association."(*b*) It is a usual provision that shares cannot be transferred while the calls remain unpaid on the shares. Payment of a deposit on an application for shares, or an allotment is not a call. A call cannot properly be made until shares have been allotted.(*c*) A call must fix the time and place for payment.(*d*) There is no debt in respect of the liability to pay a call by a going company until it has been actually called for.(*e*) Under section 16 of the Companies Act, 1862, money due by way of calls is to be deemed to be in the nature of a specialty debt.(*f*)

Where shares were specifically bequeathed to infants, and were transferred into the names of the executors of the will, and several years afterwards a call was made, it was held that it must be paid by the legatees, and not out of the testator's residuary estate.(*g*) The question whether a specific legatee of shares or the residuary estate is liable to calls depends upon whether the calls are actually made before the shareholder's death. A testatrix bequeathed shares in a banking company; before her death three calls were authorised at stated intervals, but she died before two of the periods. It was held, under the circumstances and from the practice of the company, that the calls were not to be considered as really made, until a call letter had been

(*b*) Per LINDLEY, L.J., in *In re Pyle Works*, 44 Ch. D. 583; see also *Anston's Case*, 24 L. T. 932; *Sharp* v. *Dawes*, 2 Q. B. D. 26. When a liquidator has been appointed, he is the proper person to exercise the power of calling up the unpaid capital. *In re Pyle Works*, *supra*; *Harrison* v. *St. Etienne Brewery Company* [1893], W. N. 108.

(*c*) *Croskey* v. *Bank of Wales, Limited*, 4 Giff. 314; 9 Jur. (N.S.) 595.

(*d*) *Re Cawley Company*, 42 Ch. D. 236; *Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 694.

(*e*) *Whittaker* v. *Kershaw*, 45 Ch. D. 320. As to the circumstances under which a notice sent by post to a deceased member was held to be notice to his executors, though it did not reach them, and they did not know he was a member of the company, see *New Zealand Gold Extraction Company* v. *Peacock* [1894], 1 Q. B. 622.

(*f*) 25 & 26 Vict. c. 89, s. 16. See *Buck* v. *Robson*, L. R. 10 Eq. 629, 631; 39 L. J. Ch. 821. Priority of specialty debts in the administration of assets of a deceased person is now abolished. See Judicature Act, 1875 (38 & 39 Vict. c. 79), s. 10.

(*g*) *Armstrong* v. *Burnet*, 20 Beav. 424: 24 L. J. Ch. 473.

sent to the shareholders, and as to those sent after her death, the specific legatee, and not the residuary legatee, must bear the calls.(*a*)

A shareholder in a banking company, established under the 7 Geo. 4, c. 46, devised his real estates and appointed an executor. The dividends were paid to the executor, and the shares continued in the name of the testator. After the lapse of eleven years, the company being in course of winding up the testator's estate, including his devised realty, was held liable for the amount of unpaid calls.(*b*)

Charging Shares.—Shares in a banking copartnership are shares in a public company, chargeable by a judge's order, on a judgment being recovered against the proprietor of them, within the 14th section of the 1 & 2 Vict. c. 110, which empowers a judge at chambers to grant an order charging shares in public companies, whether incorporated or unincorporated, provided that no proceedings shall be taken to have the benefit of such charge, until after the expiration of six calendar months from the date of the order. The effect of the charge by the order is the same as if the judgment debtor had himself charged the shares,(*c*) for a judgment creditor cannot by his charging order get any more than the debtor could honestly give him.(*d*)

The 3 & 4 Vict. c. 82, s. 1, enacts, that the provisions of the previous Act shall be deemed to extend to the interest of any judgment debtor, "whether in possession, remainder, or reversion, and whether vested or contingent,(*e*) as well in any such stocks or shares as aforesaid, as also

(*a*) *Addams* v. *Ferick*, 26 Beav. 384; 28 L. J. Ch. 514.

(*b*) *Turquand* v. *Kirby*, L. R. 4 Eq. 123.

(*c*) 1 & 2 Vict, c. 110, s. 14; per PARKE, B., *Graham* v. *Connell*, 19 L. J. Ex. 362. See *Coates' Case*, 47 L. J. Ch. 367; *Re Leavesley* [1891], 2 Ch. 1; *Howard* v. *Sadler* [1893], 1 Q. B. 1.

(*d*) *Gill* v. *Continental Gas Company*, L. R. 7 Ex. 338.

(*e*) See *Cragg* v. *Taylor*, L. R. 2 Ex. 131, as to what has been held a contingent interest within this enactment; and see also *Baker* v. *Tynte*, 2 E. & E. 897.

in the dividends, interest, or annual produce of such stock, &c."(*f*)

In an action, under 1 & 2 Vict. c. 110, s. 15, for permitting the transfer of shares after notice of a charging order *nisi*, and before the making of it absolute, it is a good answer to show that the judgment debtor in whose name the shares stood had no beneficial interest in them.(*g*)

A charging order when made absolute operates as from the date of the order *nisi*, and binds the stock charged as from that date.(*h*)

Shares may be charged by a judge's order, under the 1 & 2 Vict, c. 110, s. 14, with a judgment debt, although the deed of settlement of the company provides "that the shares should not be transferable, except by the consent of the directors;" and "that if any order or decree was made against any proprietor, by which his shares became charged, they should be forfeited to the company." This appears, from a case where the company was empowered to sue and to be sued in the name of a public officer, under the 7 & 8 Vict. c. 113, s. 47, and where the Court of Exchequer, holding it to be somewhat doubtful whether the body was a "public company" within the meaning of the 1 & 2 Vict. c. 110, s. 14, refused to set aside the order which had been made.(*i*) However, the same company, the Union Bank of London, has since been held by Lord CRANWORTH, V.C., to be a public company within the 1 & 2 Vict. c. 110, s. 14,(*k*) and it may be considered to be clear that shares in similarly constituted companies are chargeable with judgment debts of the proprietors.

(*f*) An order under these Acts, may be made by any Divisional Court or any judge (Judicature Acts, Order XLVI., r. 1), who must also for the future recognise equitable rights incidentally appearing. Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 24, sub-sect. (4).

(*g*) *Gill* v. *Continental Gas Company*, L. R. 7 Ex. 332; *Coates' Case*, 35 L. T. 617; *Howard* v. *Sadler*, *ante*.

(*h*) *Haly* v. *Barry*, L. R. 3 Ch. 452; *Brereton* v. *Edwards*, 21 Q. B. D. 488.

(*i*) *Graham* v. *Connell*, 19 L. J. Ex. 362; 1 L. M. & P. 438.

(*k*) *M'Intyre* v. *Connell*, 1 Sim. (N.S.) 225; 20 L. J. Ch. 284; 15 Jur. 529; see *Nichols* v. *Rosewarne*, 6 C. B. (N.S.) 480. See "Lindley on Companies," p. 462.

Hence shares in all copartnerships, formed under the 7 Geo. 4, c. 46, are chargeable; for the 7 & 8 Vict. c. 113, s. 47, which is still in force,(*a*) directs all judgments, orders, and decrees to be enforced in like manner as is provided with respect to such companies carrying on business *beyond* sixty-five miles from London, and the shares of companies carrying on business *within* sixty-five miles from London having been decided to be chargeable, it is evident the others are so also; or, in other words, all shares in these copartnerships are chargeable. The registration of banking companies under the Companies Act, 1862, constitutes them as well public as incorporated companies, and consequently the shares of the proprietors will be chargeable under the 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, s. 1.(*b*)

(*a*) 25 & 26 Vict. c. 89, s. 205, Third Schedule, 2nd Part.

(*b*) As to the law relating to shares deposited with a banker by way of equitable mortgage, see *ante*, p. 149.

CHAPTER L.

DIRECTORS.

Appointment.—Under the Companies Act, 1862, the number of directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.(*c*) There must be a majority of such subscribers to determine who are to be directors of the company, and if directors have been appointed at a meeting consisting of a minority only, the appointment is invalid.(*d*) A company may in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.(*e*)

Nature of Office.—The directors of a public company are its "managing partners"(*f*) to whom is delegated the duty of managing its general affairs, a duty they must perform with fidelity and reasonable diligence.(*g*) "They certainly are not trustees in the sense of those words as used with reference to an instrument of trust, such as a

(*c*) 25 & 26 Vict. c. 89. Table A. ,art. 52; see *John Morley Building Company* v. *Barras* [1891], 2 Ch. 393. An army officer on full pay cannot act as director in the absence of special leave (War Office Regulations, 1891), nor a civil servant (Orders in Council, 21st March and 15th August, 1890), nor, as previously stated, a clergyman, see *ante*, p. 441, and see further as to disqualification, Table A., art. 57.

(*d*) See *London and Southern Counties Freehold Land Company*, 31 Ch. D. 223; *York Tramways Company* v. *Willows*, 8 Q. B. D. 685; *Johannesberg Hotel Company* [1891], 2 Ch. 386. As to the necessary notice of meeting, see *John Morley Company* v. *Barras*, *supra*, and as to adjournment of meeting, see Table A., art. 62; *Ex parte Kennedy*, 44 Ch. D. 482.

(*e*) Table A., art. 63.

(*f*) Per Jessel, M.R., in *Imperial Hydropathic Hotel Company*, 31 W. R. 330; *Municipal Freehold Land Company* v. *Pollington*, 63 L. T. 240; *Re Forest of Dean Coal Company*, 10 Ch. D. 452.

(*g*) *Charitable Corporation* v. *Sutton*, 2 Atk. 405.

marriage settlement or will,"(a) but are only "*quasi* trustees,"(b) or, as they have been called, "commercial trustees."(c)

Upon the formation of a company promotion money had been improperly paid, of which B. was cognizant though not a party thereto. B. subsequently became a director, but took no steps to recover the money for the company. The company was then being wound up. On a summons issued by the liquidator to make B. liable under the above circumstances:—It was held, that B. was not liable for wilful default, or for misfeasance, under section 165 of the Companies Act, 1862.

"I am quite clear," said JESSEL, M.R., "about this case. One must be very careful in administering the law of joint stock companies, not to press so hardly on honest directors, as to make them liable for these constructive defaults, the only effect of which would be to deter all men of any property, and, perhaps, all men who have any character to lose, from becoming directors of companies at all. On the one hand, I think the Court should do its utmost to bring fraudulent directors to account, and, on the other hand, should also do its best to allow honest men to act reasonably as directors. Wilful default no doubt includes the case of a trustee neglecting to sue, though he might by suing earlier have recovered a trust fund,—in that case he is made liable for want of due diligence in his trust. But I think directors are not liable on the same principle. Directors have sometimes been called trustees, or commercial trustees, and sometimes they have been called managing partners: it does not matter much what you call them, so long as you understand what their true position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and of all the other share-

(a) Per KAY, J., in *In re Faure Electric Light Accumulator Company*, 40 Ch. D. 150; see also *Smith* v. *Anderson*, 15 Ch. D. 275.
(b) *Flitcroft's Case*, 21 Ch. D. 534.
(c) Per JESSEL, M.R., in *Re Forest of Dean Coal Company*, *ante*.

holders in it. They are bound, no doubt, to use reasonable diligence having regard to their position, though probably an ordinary director, who only attends at the board occasionally, cannot be expected to devote as much time and attention to the business, as the sole managing partner of an ordinary partnership, but they are bound to use fair and reasonable diligence in the management of their company's affairs, and to act honestly. But where without fraud and without dishonesty they have omitted to get in a debt due to the company by not suing within time, or because the man was solvent at one moment and became insolvent at another, I am of opinion that it by no means follows as a matter of course, as it might in the case of ordinary trustees of trust funds or of a trust debt, that they are to be made liable. Traders have a discretion as to whether they shall sue their customers, a discretion which is not vested in the trustees of a debt under a settlement. In fact, the customers of a trading partnership are very often allowed time, because the partners may think that, if they do not allow them time, they will drive the customers into bankruptcy and so suffer a greater loss than by giving them time; indeed, they not only very often give them time, but they lend them money or sell them goods in the hope that better times may come and enable them to pay their debts. Again, it may very often be most injurious to the trading concern to sue some of their debtors after the first few losses, because driving some of their debtors into bankruptcy might be very injurious to the trade, more so, in fact, than the chance of suffering a loss by letting them go on without taking action against them. Such a case as this has, in my opinion, no direct relation to the rule which makes it incumbent upon a trustee to sue a debtor at once under pain of having the liability for the debt afterwards thrown upon him, on the ground that if he had sued he could have got the money. On the other hand, as we know, a debtor must be presumed to be solvent

unless the trustee can show he was insolvent. But in my opinion no such liability attaches to directors of joint stock companies. They must, as ordinary managing partners of a trading concern, be allowed a discretion, and not be too much interfered with by the Court, or have inquiries made by the Court as to whether the debtor could have paid at a particular moment a larger or a smaller amount if he had been sued."(a)

Qualification.—It is frequently prescribed in the articles of association of a company that the taking of a minimum number of shares shall be necessary to entitle a person to hold the office of director; and questions frequently arise as to how far the acceptance of such an office amounts to evidence of an agreement to take shares under section 23 of the Companies Act, 1862.

Where a person has accepted the office of director of a company, and has acted as such, there ought to be inferred an agreement between him and the company, on his part that he will serve the company on the terms as to qualification and otherwise contained in the articles of association, and on the part of the company that he shall receive the remuneration and benefits provided by the articles for the directors. Whether, therefore, a person under such circumstances can be said to have agreed to take the necessary qualification shares will depend upon the wording of the articles. The two following cases will illustrate this. The articles of association of a company provided that the qualification of a director should be the holding of shares of the nominal amount of 1,000*l.*, that a first director might act before acquiring his qualification, but should in any case acquire it within one month from his appointment, and, unless he should do so, *he should be deemed to have agreed to take the said shares from the company*, and the same should be forthwith allotted to him accordingly. Sir H. I. signed both the memorandum and articles of

(a) *In re Forest of Dean Coal Mining Company*, 10 Ch. D. 450, 451.

association for one share. He was appointed one of the first directors, and acted as such for more than a year; but he never applied for any shares, nor were any ever allotted to him, and he was never registered as a member of the company. There were at all times down to the winding up of the company sufficient shares to enable an allotment of shares to the amount of his qualification to be made to him:—Held, by the Court of Appeal (affirming the judgment of STIRLING, J.), that Sir H. I. had, under the circumstances, agreed with the company to take, and that the company had agreed to allot to him, the shares which constituted his qualification as a director, and, accordingly, that he was liable to be settled upon the list of contributories in respect of that number of shares.(b)

It will be noticed that in this case the articles had been signed, but this fact, though not unimportant, is not essential.

By the articles of association of a limited company it was provided that the qualification of a director should be the holding of 250 shares at least, that he might act before acquiring his qualification, *but that his office should be vacated if he did not acquire it within three months after his election.* J., who had subscribed the memorandum of association for ten shares, was elected a director, accepted the office, and attended meetings of the directors for more than three months from his election, but never applied for, nor had allotted to him, any other shares than his original ten. In the winding up of the company the vice-warden of the Stannaries held that J. must be on the list of contributories for 250 shares:—Held, on appeal, that the acceptance of the office of director and the continuing to act after the time by which the qualification ought to have been acquired, did not amount to a contract by J. to take the additional shares requisite for his quali-

(b) *In re Anglo-Austrian Printing and Publishing Union* [1892], 2 Ch. 158.

fication, and that he must be upon the list for ten shares only.(a)

Powers and Authority.—The authority of directors is defined by the deed of settlement or articles of association, and they can have no powers by implication, except such as are incident to, or can be inferred from, the powers so given them.(b) Directors have, *primâ facie*, all such powers as are necessary to enable them to carry on the business of the company.(c)

A company is liable for all acts done by its directors, even though unauthorised by it, provided such acts are within the apparent authority of the directors and not *ultra vires* the company.(d) All persons dealing with a company must ascertain the limitations imposed by the deed of settlement, statute, or articles of association, but they are not bound to draw any but direct or obvious inferences from the provisions they find there, nor is there any obligation cast upon them to see that such directors have been properly appointed, or that they have acted exactly in accordance with the manner prescribed therein.(e) Such persons are entitled to presume *omnia rite acta.*(f)

(a) *In re Wheal Buller Consols*, 38 Ch. D. 42; see further *In re Hercynia Copper Company* [1894], 2 Ch. 403; *In re Issue Company* [1895], 1 Ch. 226.

(b) *Mahony* v. *East Holyford Mining Company*, L. R. 7 H. L. 869; *Ernest* v. *Nicholls*, 6 H. L. C. 419; *Oakbank Oil Company* v. *Crum*, 8 App. Cas. 71; *Bank of Australasia* v. *Breillut*, 6 Moore P. C. 190; *Royal British Bank* v. *Turquand*, 6 E. & B. 332.

(c) *Hutton* v. *West Cork Railway Company*, 23 Ch. D. 665; *Re Norwich Equitable Fire Assurance Company*, 58 L. T. 35; *Cartmell's Case*, L. R. 9 Ch. 697. At a meeting of the board, directors can transact business other than that specified in notice convening meeting. *La Compaigie De Mayville* v. *Whiteley* [1896], 1 Ch. 788.

(d) *Riche* v. *Ashbury Railway Company*, L. R. 9 Ex. 227.

(e) *Royal British Bank* v. *Turquand*, *supra*; *Mahony* v. *East Holyford Mining Company*, *supra*; *Ernest* v. *Nicholls*, *supra*; *Royal Bank of India's Case*, L. R. 4 Ch. 262. See further *In re Hampshire Land Company* [1896], 2 Ch. 743.

(f) *In re County Life Assurance Company*, L. R. 5 Ch. 288; *Howard* v. *Patent Ivory Company*, 38 Ch. D. 156. The articles of a company made three directors a quorum. Two directors only were present at a meeting where the seal of the company was affixed by the secretary to a mortgage deed. Held, that it was not the duty of mortgagors to enquire whether the secretary was duly authorised to affix the seal, and that it must be taken that the deed was duly executed. *County of Gloucester Bank* v. *Rudry Merthyr Colliery Company* [1895], 1 Ch. 629.

In the case of a contract made by the directors of a company the onus of proving that they made it with the authority of the company is upon the person seeking to enforce it.(*g*)

Calls.

Directors can only make calls at such times, after such notices and of such amounts as are prescribed in the articles of association.(*h*)

Torts.

A company is also liable for the torts of its directors committed by them when acting within the scope of their authority; and there is no difference in this respect between fraud,(*i*) even though it include forgery,(*k*) and any other wrong; but before a company can be made so liable it must be shown that the directors were acting on behalf of the company, and not merely to further their own private ends.(*l*) A director of a company is not liable for the fraud of his co-directors unless he has expressly or impliedly authorised its commission.(*m*)

A company not otherwise liable for an act of its directors may become so by ratification, but if the act is *ultra vires* the company it cannot be ratified even with the assent of the shareholders.(*n*)

Contracts under Companies Acts.—Banking companies incorporated under the Act of 1862, whether as limited or as unlimited companies, were legally bound only by contracts made by deed under their common seal.(*o*) But

(*g*) *Ridley* v. *Plymouth Baking Company*, 2 Ex. 711.

(*h*) *Re Pyle Works*, 44 Ch. D. 583.

(*i*) *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; *Barwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 265; *Weir* v. *Bell*, 3 Ex. D. 238; *Nichols' Case*, 3 De G. & J. 437.

(*k*) *Shaw* v. *Port Philip Gold Mining Company*, 13 Q. B. D. 103.

(*l*) *British Mutual Banking Company* v. *Charnwood Forest Railway Company*, 18 Q. B. D. 717. A banking company is not liable for misrepresentation respecting a customer's credit signed by its manager. See *post*, p. 469.

(*m*) *Cargill* v. *Bower*, 10 Ch. D. 502; 47 L. J. Ch. 649; *Land Credit Company of Ireland* v. *Lord Fermoy*, L. R. 5 Ch. 772; *Re Denham*, 25 Ch. D. 752.

(*n*) *Ashbury Railway Company* v. *Riche*, L. R. 7 H. L. 681; *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 374.

(*o*) *McArdly* v. *Irish Iodine Company*, 15 Ir. C. L. Rep. 146.

since the Companies Act, 1867,(*a*) s. 37 (1), any contract which, if made between private persons, would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company, in writing under the common seal of the company, and such contract may be in the same manner varied or discharged; (2.) any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may be varied or discharged; (3.) any contract which, if made between private parties, would by law be valid, although made by parol only, and not reduced into writing may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may, in the same way, be varied or discharged. And all contracts made according to the above provisions will be effectual in law, and be binding upon the company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be. An agreement entered into before a company comes into existence cannot be ratified.(*b*)

Bills and Notes.—Bills and notes drawn by directors on behalf of a company should appear on the face of them to be drawn on its behalf, for if there is nothing on the note or bill itself to exclude their personal liability they will be held liable. The fact that the company's seal has been affixed is not sufficient to exclude their personal liability.(*c*)

By the Companies Act, 1862, s. 42, directors of a

(*a*) 30 & 31 Vict. c. 131; *Beer* v. *London and Paris Hotel Company*, L. R. 20 Eq. 412.

(*b*) *In re Northumberland Avenue Hotel Company*, 33 Ch. D. 16; *Howard* v. *Patent Ivory Company*, 38 Ch. D. 163.

(*c*) *Dutton* v. *Marsh*, L. R. 6 Q. B. 361; *Courtauld* v. *Sanders*, 15 W. R. 9; see *ante*, pp. 27, 28, 303.

limited company are liable to a penalty of 50*l*., if they sign or authorise to be signed on behalf of such company bills of exchange, promissory notes, &c., wherein its name is not mentioned as in the manner prescribed in the Act.(*d*)

Notice affecting Company.—Knowledge of a particular fact relating to the accounts by one director of a banking company, is not notice to the company, where that director has no voice in the management of the accounts, and the money transactions of the company are conducted exclusively by a manager under three directors, of whom the director possessing the knowledge is not one.(*e*) But where one of the directors is clad with authority to act on behalf of the company, notice of matters coming within the scope of that authority is notice to the company.(*f*)

Purchase of Shares.—It is not competent for a company formed under the Act of 1862 to purchase its own shares even when it is authorised by its articles to do so.(*g*)

Approval of Transfer.—Where articles of association prescribe that the company may decline to register any transfer of shares whilst a shareholder is indebted to the company, or unless the transferee is approved of by the directors, the directors are not warranted in arbitrarily refusing to register the transfer, if the shareholder is not in point of fact indebted to the company.(*h*)

A power in the articles of association of a bank to decline to register any transfer of shares unless the transfer

(*d*) 25 & 26 Vict. c. 89, s. 42; *Atkins* v. *Wardle*, 58 L. J. Q. B. 377.

(*e*) *In re Carew*, 31 Beav. 39.

(*f*) *British and American Telegraph Company* v. *Albion Bank*, L. R. 7. Ex. 119; 41 L. J. Ex. 67; *Ex parte Agra Bank*, L. R. 3 Ch. 555.

(*g*) *Trevor* v. *Whitworth*, 12 App. Cas. 409; *Hope* v. *International Financial Society*, 4 Ch. D. 327.

(*h*) *Slee* v. *International Bank*, 17 L. T. 425; *In re Stranton Iron Company*, L. R. 16 Eq. 559; *Ex parte Penney*, L. R. 8 Ch. 446; *Moffatt* v. *Farquhar*, 7 Ch. D. 591; 47 L. J. Ch. 355; *Poole* v. *Middleton*, 29 Beav. 646; *Robinson* v. *Chartered Bank*, L. R. 1 Eq. 32; *Pender* v. *Lushington*, 6 Ch. D. 70; 46 L. J. Ch. 317; *Re Cawdley*, 42 Ch. D. 209; *Murray* v. *Bush*, L. R. 6 H. L. 71; *Weston's Case*, L. R. 4 Ch. 20. See also cases cited on p. 442, *ante*.

is approved of is not to be arbitrarily exercised. The board in such case is to exercise its discretion in a reasonable manner.(*a*)

A deed of settlement of a banking copartnership declared that no transfer of shares should be permitted, except upon notice to the directors, and, on the consent of a board of directors, such consent being signified by a certificate in writing signed by three directors, at the least; if such consent were refused, the shareholder might require the directors to buy his shares at the market price of the day. After a consent given, the name of the transferee was entered in the share register book, and the entry there was conclusive against him.

A shareholder proceeded to transfer his shares to different persons, and sent the proper notices to the directors; received back consents signed by three directors; and completed the transfers; the transferees' names were entered in the share register book; and, in the return made to the Inland Revenue, his name was omitted from the list of shareholders, and inserted in the list of those who had ceased to be shareholders. The transferees' afterwards received the regular notices of meetings of shareholders. The directors, subsequently, sought to impeach these transfers, on the ground of the notices never having been submitted to a board of directors, nor the consents given by a board of directors, as required by the deed, but that the consents had been signed by the managing director, and then signed by two other directors. This appeared to have been the mode of transacting this description of business ever since the formation of the company. The House of Lords decided, that the directors could not set up their own want of observance of the formalities required by the deed, as a ground on which to fix him with liability as continuing to be a shareholder, but that they were bound by their course of dealing.(*b*)

(*a*) See note (*h*), *ante*, p. 455.
(*b*) *Bargate* v. *Shortridge*, 5 H. L. Cas. 297.

Directors are not liable for an error of judgment in approving a transfer provided they have acted *boná fide.*(c)

Directors who wantonly or for a corrupt reason refuse consent to a transfer may be compelled to do so by *mandamus.*(d) But in the absence of corrupt or capricious conduct on their part the Court will not interfere.(e)

Borrowing by Directors.—Directors of a trading company have implied authority to borrow money to a reasonable amount for the purposes and necessities of the company,(f) and for this purpose may make an equitable mortgage by deposit of title deeds.(g) The overdrawing by a company of its banking account on the security of an equitable mortgage amounts to a borrowing.(h)

Forfeiture of Shares.—A power to forfeit shares must be expressly conferred by the deed of settlement or articles of association; it cannot be implied or inferred,(i) and the power to forfeit where it exists must be construed strictly.(k)

Where a person has once become a member of a company his membership can only be put an end to in the manner authorised by the constitution of the company, and its directors cannot release him or suffer him to withdraw in any other way.(l) And where there is a power to forfeit shares directors must exercise it for the

(c) *Re Faure Electric Company*, 40 Ch. D. 141.

(d) *Ex parte Penney*, L. R. 8 Ch. 446; *Ex parte Hodgson*, 65 L. T. 245.

(e) *Ibid.* Directors are not bound to state grounds for refusal if acting *boná fide*. *In re Coalport China Company* [1895], 2 Ch. 404.

(f) *Ex parte Pitman*, 12 Ch. D. 707: *General Auction Estate Company* v. *Smith* [1891], 3 Ch. 432.

(g) *Patent File Company*, L. R. 6 Ch. 83; *Re Clough*, 31 Ch. D. 324.

(h) *Looker* v. *Wrigley*, 9 Q. B. D. 397; *Brooks* v. *Blackburn Benefit Society*, 9 App. Cas. 865; see further as to borrowing by company, *ante*, p. 168.

(i) *Clarke* v. *Hart*, 6 H. L. C. 633; *Hope* v. *International Financial Society*, 4 Ch. D. 327; 46 L. J. Ch. 200; *Fletcher's Case*, 37 L. J. Ch. 49; *Trevor* v. *Whitworth*, 12 App. Cas. 409.

(k) See *Clarke* v. *Hart*, *supra*; *Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 687; *Jackson* v. *Northampton Street Tramways Company*, 55 L. T. 525.

(l) *Spackman* v. *Evans*, L. R. 3 H. L. 233.

good and benefit of the company and not for the shareholder; and they are guilty of a fraud upon the shareholders if a collusive forfeiture is made by them merely for the purpose of enabling the shareholder to get rid of his liability.(*a*)

Surrender of Shares.—A company may give itself power to accept surrenders of shares—a surrender having practically the same effect as a forfeiture; the main difference being that the former is a proceeding taken with the assent of the shareholder and the latter without it. But, as has been previously stated, a company cannot purchase its own shares, and, consequently, a surrender of shares to a company, the consideration for such surrender being a payment out of the funds of the company, is *ultra vires;* for such a transaction is a sale to the company and open to the same objections as a sale.(*b*)

It would seem, however, that there is nothing to prevent a company accepting a surrender of old shares in exchange for new preferential shares if the transaction is a *bonâ fide* one.(*c*)

The validity of each case of surrender of shares must be decided upon its own merits.(*d*) Where directors are authorised by the articles of the company to accept surrenders of shares they must in so doing act solely for the benefit of the company.(*e*)

Paying Dividends out of Profits.—The payment of dividends derived from other sources than the profits of the company is a breach of trust on the part of the directors: for dividends are supposed to be paid out of the profits only, and when directors order a dividend to

(*a*) *Stanhope's Case*, L. R. 1 Ch. 169; *Spackman* v. *Evans, ante; Ex parte Trading Company*, 12 Ch. D. 201.

(*b*) See *Trevor* v. *Whitworth*, 12 App. Cas. 409; in which the above subject is fully discussed.

(*c*) *Teasdale's Case*, L. R. 9 Ch. 54; *Trevor* v. *Whitworth, supra.*

(*d*) Per Lord HERSCHELL, in *Trevor* v. *Whitworth*.

(*e*) *Snell's Case*, L. R. 5 Ch. 22; *Campbell's Case*, 42 L. J. Ch. 505; *Daniell's Case*, 22 Beav. 43.

any given amount, they, without expressly saying so, yet, impliedly, do declare to the world that the company has made profits which justify such a dividend. In such a case they become liable jointly and severally, as on a breach of trust, to make good the amount of such payment with interest at 4 per cent., nor can they set off any money due from the company to them against the amounts they are ordered to replace.(*f*)

Secret Profits.—It is a well settled principle of law that an agent cannot, unless with the knowledge and consent of his principal, make any profit out of his agency. This rule applies as between a director of a company and its shareholders. It is, therefore, not permissible for directors to make use of their position for the purpose of securing to themselves any kind of profit beyond their lawful remuneration, and the company has a right to recover from them any profit they may have so received.(*g*) So, a director must not receive presents of shares from a vendor or promoter, and if he does, he receives them to the use of the company.(*h*) So, it has been held that directors cannot pay themselves for their services or make presents to themselves, out of the company's assets, unless authorised to do so by the instrument regulating the company or by the shareholders at a properly convened meeting.(*i*)

Directors issuing Shares at a Discount.—It is not competent for directors to issue shares at a discount, so as to make the holder liable for less than their full amount. Where directors *bonâ fide* agreed, in consideration of a stipulated service, to allot shares at a discount and the

(*f*) *Leeds Estate Company* v. *Shepherd*, 36 Ch. D. 788; 57 L. J. Ch. 46; *Flitcroft's Case*, 21 Ch. D. 519; *In re Oxford Benefit Building Society*, 35 Ch. D. 502; *Pelly's Case*, 21 Ch. D. 492.

(*g*) *Hay's Case*, L. R. 10 Ch. 593; *Archer's Case* [1892], 1 Ch. 322; *Phosphate Sewage Company* v. *Hartmont*, 5 Ch. D. 394; *Parker* v. *McKenna*, L. R. 10 Ch. 96.

(*h*) *McKay's Case*, 2 Ch. D. 1; *Re Carriage Co-operative Association*, 27 Ch. D. 322.

(*i*) *In re George Newman and Company* [1895], 1 Ch. 674.

allottee having subsequently received certificates of fully paid-up shares, paid to the company the par value less 10 per cent. discount, and subsequently sold the same to *bonâ fide* purchasers at a profit. It was held, that the directors were answerable to the company for the discount allowed. But that they were not liable beyond the discount, there being no proof of fraud against the company, or of further resulting damage to it from the transaction :—It would seem that such further resulting damage could not have exceeded the difference between the price paid by the allottee and the presumable value of the shares at the date of the agreement, if it and the transactions founded thereon had never taken place.(*a*)

Liability under Winding-up Act, 1890.(*b*)—Where in the course of the winding up of a company under the Companies Acts it appears that [any person who has taken part in the formation or promotion of the company, or] any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such [promoter], director, manager, liquidator, or other officer of the company, and compel him to repay any moneys [or restore any property] so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

[The provisions of this section shall apply in the winding

(*a*) *Hirsche* v. *Sims* [1894], A. C. 654.
(*b*) 53 & 54 Vict. c. 63, s. 10, substantially re-enacting section 165 of the Companies Act, 1862, with the addition of the words in brackets.

up of any company under the Companies Acts, whether the same is being wound up by or subject to the supervision of the Court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and] notwithstanding that the offence is one for which the offender may be criminally responsible.(c)

Liability under Directors' Act, 1890.(*d*)—Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in, or debentures, or debenture stock of, a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised(*e*) such naming of him is named in the prospectus or notice as a director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter(*f*) of the company, and

(*c*) It was held under section 165 of the Act of 1862, that the applicant must show misfeasance as a fact and that the breach of duty has resulted in a loss to the assets of the company, and that he has a direct pecuniary interest in the success of the application. *Cavendish Bentinck* v. *Fenn*, 12 App. Cas. 652; 57 L. J. Ch. 552; see also *Archer's Case* [1892], 1 Ch. 322. A banker was held not to be an officer of the company, under section 165: *Re National Bank*, L. R. 10 Eq. 298; *Re General Provident Assurance Company*, L. R. 14 Eq. 515; nor is the executor of a deceased director: *Re British Guardian Life Assurance Company*, 14 Ch. D. 335; nor is the solicitor of the company: *Carter's Case*, 31 Ch. D. 496; but a liquidator may be proceeded against under the section: *Re Llynvi and Tondu Company*, 6 "Times" R. 12. As also may an auditor: *Re Kingston Cotton Company*, No. 2, [1896]. 2 Ch. 279. In that case it was held that section 10 of the Act of 1890, does not apply to all cases in which actions will lie by the company for recovery of damages, but it does apply to breaches of duty by officers, the direct consequence of which has been a misapplication of the company's assets for which they could be made responsible by an action at law or in equity. See further as to auditors, *Re London General Bank* [1895], 2 Ch. 166 and 673. A director may become liable for a misfeasance by ratification. See *Re Lands Allotment Company* [1894], 1 Ch. 616; see also the same case as to the application of the Statute of Limitations to directors guilty of misfeasance—they have now the same protection that the Trustee Act, 1888, gives to trustees. For a useful summary of acts that have been held to amount to misfeasance on the part of directors, see Manson's "Law of Trading Companies," p. 224.

(*d*) 53 & 54 Vict. c. 64, s. 3.

(*e*) See *In re Whittey and Company*, 32 Ch. D. 337; 55 L. J. Ch. 540.

(*f*) See sub-section (2) of section 3 of the Act.

Liability of directors for statements in prospectus.

every person who has authorised the issue of the prospectus or notice shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice, for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved—

(A.) With respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and

(B.) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of, or extract from, a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of, or extract from, the report or valuation: Provided always, that, notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid, if it be proved that he had no reasonable ground to believe that the person making

the statement, report, or valuation was competent to make it; and

(c.) With respect to every such untrue statement, purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, that it was a correct and fair representation of such statement or copy of, or extract from, such document;

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.(*a*)

(*a*) Section 4 provides for the indemnification of a person whose name has been improperly inserted as a director, and section 5 deals with the right of contribution of a director against his co-directors. As to fraudulent prospectus, see Manson's "Law of Trading Companies," p. 65.

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CHAPTER LI.

MANAGER.

BANKING copartnerships and companies, where their business is extensive, or branches are established, appoint managers. In deeds of settlement of joint stock banks formed under the 7 & 8 Vict. c. 113, a specific provision as to the appointment of a manager, or other officer to perform the duties of manager, was necessary.(*a*) That statute required the manager to make out, verify, and deliver to the Stamp Office, the annual returns of the title of the company, the names and places of abode of the members, directors, and manager, and the names and places of the local banks established by the principal bank.(*b*) Legal proceedings and notices might be served upon him.(*c*) The duties imposed by this statute upon managers of joint stock banks formed under its provisions and still in operation must be continued to be discharged by them. The subsequent Acts regulating the formation of banking companies do not specifically require the appointment of managers. But when these companies appoint managers, then the penalties which the Companies Act of 1862 imposes upon managers of limited banking companies omitting or neglecting to affix the name of their company on the outside of its several places of business and branches, to sign instruments, official documents, and notices with the seal of the company, to publish the statements of its capital, assets, and liabilities,(*d*) to notify to the registrar every increase of the capital of the com-

(*a*) Section 4.
(*b*) *Ibid.* ss. 16—18, *ante*, p. 382.
(*c*) *Ibid.* s. 43, *ante*, p. 388.
(*d*) *Ante*, pp. 406, 407.

pany,(e) to keep the register of its members,(f) to make out and forward to the registrar the annual list of its members and summary of particulars,(f) as required by that Act, or refusing an inspection of the register,(g) will be incurred by the managers. It will be their office to attend to the proper discharge of these different duties.

Bills.—If, as has been previously stated, a person filling an official position makes, draws, or accepts bills or notes in that official capacity he is nevertheless liable personally thereupon: consequently, if a manager of a company accepts a bill merely adding the word "manager" after his signature he may be sued on it.(h) To guard himself against this liability he must use words showing upon the face of the bill that he subscribes it for another, or by procuration of another, which are words of exclusion,(i) for such words as "agent," "manager," following a signature, are regarded merely as *designatio personæ*.(k) On the other hand, if a note or bill is made payable to an officer by his name of office, the property therein vests in the person who then holds that office. So, if a note is made payable to the manager of a particular bank it vests in the person who is in fact the manager at that time.(l)

A manager may sue in his own name on bills which a banking firm holds indorsed in blank.(m)

Where a bill is drawn, accepted, or indorsed by a manager of a bank, with the words *per procuration*, the legal effect of these words is to give an express intimation to every one, that the acceptance or indorsement was made

(e) *Ante*, p. 408.
(f) *Ante*, p. 410.
(g) *Ante*, p. 412.
(h) *Eaton* v. *Bell*, 5 B. & Ald. 34; *Liverpool Bank* v. *Walker*, 4 De G. & J. 24.
(i) Bills of Exchange Act, 1882, s. 26. *Courtauld* v. *Sanders*, 16 L. T. (N.S.) 562; *Alexander* v. *Sizer*, L. R. 4 Ex. 102; *Dutton* v. *Marsh*, L. R. 6 Q. B. 361.
(k) *Leadbitter* v. *Farrow*, 5 M. & S. 349.
(l) *Robertson* v. *Sheward*, 1 M. & G. 511.
(m) *Law* v. *Parnell*, 7 C. B. (N.S.) 282.

under a special or limited authority, binding every one, therefore, to ascertain, before he takes such a bill, that the indorsement is agreeable to the authority given, according to a well-known rule respecting all such acceptances or indorsements. A party taking such a bill, therefore, without inquiry, if it turns out that the manager accepting or indorsing exceeded his authority, must suffer for his temerity.(*a*)

It is customary with many banking companies to communicate, by circular to their agents and correspondents, the fact of the appointment of their manager, and his authority to sign drafts on their account, with a specimen of his handwriting.

Arrest and Prosecution of Offenders.—The arrest, and still less the prosecution of offenders, is not within the ordinary routine of banking business, and, therefore, not within the ordinary scope of a bank manager's authority. Evidence accordingly must be forthcoming to show that such arrest or prosecution is within the scope of the duties and class of acts such manager is authorised to perform. That authority may be general, or it may be special and derived from the exigency of the particular occasion on which it is exercised. In the former case it is enough to show commonly that the agent was acting in what he did on behalf of the principal; but in the latter case evidence must be given of a state of facts which shows that such exigency is present, or from which it might reasonably be supposed to exist. Such a presumption would probably arise in the instance of a manager conducting the business of a branch bank at a distance from the head office and the board of directors.(*b*)

Duties and Authority.—The position of a manager, like that of a director,(*c*) is a fiduciary one as regards the

(*a*) Bills of Exchange Act, 1882, s. 25. *Alexander* v. *Mackenzie*, 6 C. B. 766; *Stagg* v. *Elliott*, 12 C. B. (N.S.) 373; 31 L. J. C. P. 260. See *ante*, p. 303.

(*b*) *Bank of New South Wales* v. *Owston*, 4 App. Cas. 270.

(*c*) See *ante*, p. 459, as to secret profits of directors.

company, from which it follows that no secret profit may be made by him and that the company is entitled to whatever property may be so acquired by him.(*d*)

A company is liable for all the acts of its manager, however much those acts may be in excess of the authority conferred upon him : provided they come within the scope of his employment as such, and provided the party dealing with him has no knowledge that he is exceeding his authority,(*e*) even though such acts may be wrongful or even fraudulent,(*f*) and the fraud includes a forgery.(*g*) Nor does it seem necessary that the company should have derived any actual benefit from the fraud or wrong of its manager,(*h*) though it is essential that when committing it the manager was acting for the company and not for himself and for the purpose of promoting his own private ends.(*i*)

The articles of association should define, as carefully and fully as possible, the duties and powers of the manager, especially as regards external acts, such as the extent to which, and the form in which, he may bind the company by accepting or indorsing bills, taking up or advancing loans, &c.

The situation of manager is one of high trust, but the trust becomes still greater, and the responsibility much enhanced, in the case of a *local* manager of a branch

(*d*) *General Exchange Bank* v. *Horner*, L. R. 9 Eq. 480.

(*e*) *Bayley* v. *Manchester, &c., Railway Company*, L. R. 8 C. P. 148.

(*f*) *Barwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 265 ; *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 394 ; *Glasier* v. *Rolls*, 58 L. J. Ch. 325 ; *Weir* v. *Bell*, 3 Ex. D. 238.

(*g*) *Shaw* v. *Port Philip Gold Mining Company*, 13 Q. B. D. 103 ; *Ex parte Shoolbred*, 28 W. R. 339.

(*h*) *Swift* v. *Winterbotham* L. R. 8 Q. B. 244, reversed, but on another point, L. R. 9 Q. B. 301. See *British Mutual Banking Company* v. *Charnwood Forest Railway Company*, 18 Q. B. D. 717, in which case Lord ESHER said : "The rule has often been expressed in the terms, that to bind the principal the agent must be acting 'for the benefit' of the principal. This, in my opinion, is equivalent to saying that he must be acting 'for' the principal ; since if there is authority to do the act it does not matter if the principal is benefited by it."

(*i*) *British Mutual Banking Company* v. *Charnwood Company*, *supra* ; *McGowan* v. *Dyer*, L. R. 8 Q. B. 141 ; *Limpus* v. *General Omnibus Company*, 1 H. & C. 526.

establishment of the bank. For many purposes he is looked upon by the law and is treated as if he were the whole body, whom he has power to bind even by his tortious acts, although he may not be a partner.

For instance, if a local manager of a branch bank gets into his hands the money of a customer of the bank by inducing the customer to consider that he is acting in the transaction as agent of the bank and is invested with authority to effect the purposes for which the customer confides the money to him, and then appropriates the money to his own purposes, the customer's loss will fall upon the copartnership. To hold the bank not to be liable in such case would be, it has been said, to hand over the public to the mercy of the clerks employed by these banks. The principle seems to be, that the manager is a servant whom the bank, for the purposes of their trade, virtually accredit and hold out to the world as invested by them with general authority to act for them in the affairs of the branch bank, and the public has no power or means to discriminate what is, and what is not, in any particular case, within the legitimate scope of the agent's powers or in accordance with the directions of his principals; and, therefore, when a customer, in a matter connected with his relations with the branch bank, confides in the servant, he, in fact, trusts the masters and they are liable even for the fraud of the servant whom they have appointed, if committed in the course of his service.(*a*)

It is usual for customers of a bank to make inquiries through their bankers as to the commercial credit and solvency of persons with whom they intend to have monetary transactions, as a measure of precaution to them-

(*a*) *Thompson* v. *Bell*, 10 Exch. 11. See *Pickering* v. *Busk*, 15 East, 38; *Barwick* v. *London Joint Stock Bank*, L. R. 2 Ex. 259; *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; *McGowan* v. *Dyer*, L. R. 8 Q. B. 141; *Addie* v. *Western Bank of Scotland*, L. R. 1 H. L. Sc. 145; *Houldsworth* v. *City of Glasgow Bank*, 5 App. Cas. 317.

selves, and it has been held to be(*b*) within the scope of a manager's general authority to make these inquiries and to afford the requisite information. But by 9 Geo. 4, c. 14, which is commonly called Lord TENTERDEN'S Act, it is enacted, that "no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person to the intent or purpose that such other person may obtain credit, money, or goods upon (*sic* in the original section), unless such representation or assurance be made in writing, signed by the party to be charged therewith," and it has been decided that a bank is not responsible for a misrepresentation respecting a customer's credit signed by its manager, such signature not being the signature of the party chargeable.(*c*)

Any one employed in a bank under the principals to carry on the business of the bank, whether called secretary, manager, accountant, cashier, or by any other name, is a clerk, and if at the head of his department, is a chief clerk within 9 Geo. 4, c. 23, s. 7, for verifying country bank issues of bills and notes.(*d*)

Manager's Liability to his Employers.—Where in an action by a banking company against their late manager and cashier to recover moneys belonging to the bank, alleged to have been improperly applied, in discounting bills for his own advantage, for the benefit of persons and companies with whom he was connected, and in which he was interested, it appeared that such transactions were all in the ordinary course of the business of the bank, that he had not exceeded the power and authority with which he was entrusted, and that no case of bad faith could be

(*b*) *Swift* v. *Winterbotham*, L. R. 8 Q. B. 244.

(*c*) *Swift* v. *Jewsbury*, L. R. 9 Q. B. 301. See *ante*, note (*c*), on pp. 376, 377. It would seem that the fact of the representation being fraudulent does not dispense with the necessity for it to be in writing. *Clydesdale Bank* v. *Paton* [1896], A. C. 381.

(*d*) *Reg.* v. *Greenland*, 10 Cox. C. C. 377; 1 L. R. C. C. 65; 36 L. J. M. C. 37.

established against him, the Privy Council held that the action was not maintainable.(*a*)

A manager who does not prepare balance sheets such as are required by the articles of a company showing a true and correct view of the company's affairs, and who does not keep the proper account is liable in damages to the company.(*b*)

The criminal liability of managers will be mentioned in Chapter LIII.

(*a*) *Bank of Upper Canada* v. *Bradshaw*, 4 Moore P. C. C. (N.S.) 406; L. R. 1 P. C. 479; and see *Ward* v. *Greenland*, 19 C. B. (N.S.) 527.

(*b*) *Leeds Estate Company* v. *Shepherd*, 36 Ch. D., p. 809.

CHAPTER LII.

PUBLIC OFFICER.

Appointment.—The 7 Geo. 4, c. 46 (1826), which legalised the establishment of banking copartnerships in England, exceeding a radius of sixty-five miles from London, required them to nominate and appoint two or more public officers, being members and resident in England, and empowered them to sue and to be sued in the name of one of such public officers.(*d*) The duties which this Act imposes upon a public officer are the making out, verifying on oath, and delivering to the Inland Revenue Office the several annual returns in the forms prescribed, as pointed out in a former Chapter.(*e*) These provisions apply only to banking companies established *beyond* sixty-five miles from London. The 3 & 4 Will. 4, c. 98, which enabled banking companies to establish themselves *within* sixty-five miles of London, did not confer upon them the power or privilege of suing or being sued in the name of a public officer. The 7 & 8 Vict. c. 113, s. 47, first conferred this power or privilege upon these banking companies, if established before the 6th of May, 1844, provided they made out and delivered, from time to time, to the Board of Inland Revenue, the returns required by the 7 Geo 4, c. 46, and all the provisions of such Act are to apply to the accounts or returns so made out and delivered by such companies, as if they had been originally included in the provisions of the 7 Geo. 4, c. 46. The Companies Act, 1862,(*f*) although it repeals the 7 & 8 Vict. c. 113, expressly re-enacts the 47th section. The appointment of public officers by banking companies, formed under the

(*d*) 7 Geo. 4, c. 46, ss. 4, 9.
(*e*) *Ante*, p. 374.
(*f*) 25 & 26 Vict. c. 89, s. 205. Third Schedule, Part II.

provisions of the 7 & 8 Vict. c. 113, became altogether unnecessary on their obtaining charters of incorporation; neither are public officers required to be appointed by banking companies established under the Companies Act, 1862, as on registration these companies become entitled to all the privileges of incorporated bodies.(*a*)

The appointment of public officers, when required, is regulated by the terms of the deed of settlement of the company, and should generally be made by a deed. The appointment may be proved by a certified copy of the official return to the Inland Revenue Office, or by the production of the instrument appointing them, or even by parol evidence.(*b*)

Banking copartnerships surrendering their right to issue their own bank notes, by agreement with the Bank of England, do not lose the privilege of suing or being sued in the name of their public officer.(*c*)

Actions and Suits.—In respect of banking companies governed by 7 Geo. 4, c. 46, all actions by or against the company must be brought by or against its public officer, and not otherwise. It is not competent for creditors to sue the individual members.(*d*)

In an action by a public officer, it is usual, though not essential, to allege, that he, at the commencement of the suit,(*e*) has been named and duly appointed one of the public officers of the copartnership; but it is not necessary to state that he is a member of the company, or that he has been duly registered,(*f*) or that he has been duly named and appointed as the nominal plaintiff on behalf of the copartnership.(*g*)

(*a*) 25 & 26 Vict. c. 89, s. 18.
(*b*) *Edwards* v. *Buchanan*, 3 B. & Ad. 788.
(*c*) 27 & 28 Vict. c. 32, s. 1.
(*d*) *Steward* v. *Greaves*, 10 M. & W. 721; *Todd* v. *Wright*, 16 L. J. Q. B. 311; *Chapman* v. *Milvain*, 5 Exch. 61. If there is no public officer to sue, it would seem that the company may be compelled to appoint one. *Todd* v. *Wright*, 16 L. J. Q. B. 311.
(*e*) *Esdaile* v. *Maclean*, 15 M. & W. 277; *M'Intyre* v. *Miller*, 13 M. & W. 725.
(*f*) *Spiller* v. *Johnson*, 6 M. & W. 570.
(*g*) *Christie* v. *Peart*, 7 M. & W. 491.

Notwithstanding the change of name of the copartnership, and the accession of fresh proprietors, the increase of their capital, and the addition of fresh directors, the public officer of the new copartnership is the proper person to sue on a guarantee given to the company before the alteration.(*h*)

The public officer may sue after the copartnership has suspended payment, and the establishment is kept open only for the purpose of winding up.(*i*)

So, when a warrant of attorney has been given to the trustees of the copartnership to secure a debt due to the copartnership, the judgment thereon can only be entered up in the name of the public officer.(*k*)

So the public officer is to sue on a breach of covenant with trustees of the copartnership to pay calls,(*l*) and, in general, is the only proper party to sue on all covenants in the deed of settlement; although the covenants are made with trustees.(*m*)

But a note payable to the order of a person who is a trustee for the company must, if unindorsed, be sued upon by the payee, and not by the public officer of the company.(*n*)

The company will not be bound by a judgment in an action by a person not at the time their public officer.(*o*) If a defendant, in an action purporting to be brought by a public officer of a company, traverses his appointment as a public officer, and has a verdict on that issue, it is a good defence.(*o*)

Both the public officers cannot sue together; but if they are joined, an amendment by striking out the name of one will be allowed.(*p*)

(*h*) *Wilson* v. *Craven*, 8 M. & W. 584.
(*i*) *Davidson* v. *Cooper*, 11 M. & W. 778; *Harrison* v. *Brown*, 5 De G. & S. 728.
(*k*) *Bell* v. *Fisk*, 12 C. B. 493.
(*l*) *Wills* v. *Sutherland*, 4 Exch. 211.
(*m*) *Chapman* v. *Milvain*, 5 Exch. 61.
(*n*) *M'Dowell* v. *Doyle*, 7 Ir. Com. Law Rep. 598.
(*o*) *Barnewall* v. *Sutherland*, 19 L. J. C. P. 292. See *Paterson* v. *Ironside*, 14 Jur. 722 n.
(*p*) *Holmes* v. *Binney*, 6 Scott, 346; 4 Bing. N. C. 454. As to suing

Liabilities.—In an action in which a public officer sues on behalf of the company, interrogatories may be administered to him, and he must answer them. (*a*)

When an action is brought against the public officer of a copartnership, as such, he will not be permitted to plead that he has become bankrupt, for he is a mere parliamentary defendant; he represents the interests, perhaps, of several hundred persons, and, if he were to be allowed to plead such a plea, of a matter merely personal to himself, in bar of the action, he would confer the benefit of that defence on all those whom, as a matter of form, he represents as defendants. In such a case, however, the plaintiff would be restrained from issuing execution against the defendant, or his estate.(*b*) Nor does attachment lie against him.(*c*)

Accordingly, it has been held that where a deed of settlement provided, that if any of the public officers became bankrupt he should become disqualified, and his office should become vacant, the proper construction was not that the person should cease to be public officer absolutely, but only at the election of the company.(*d*) If bankruptcy, *per se*, disqualified, the company could have had no election.

So, a person sued as public officer will not be allowed to plead that he is not public officer, *together* with other pleas going to the merits of the action. He may rely on that plea as his sole defence, if it is capable of proof; but, as the company are the real defendants, they must rely on such defence as they have to the merits of the action; they cannot be allowed to turn the plaintiff round on so mere a matter of form as whether the defendant was public

both, 16 M. & W. 669. As to bankruptcy proceedings by public officers, see Bankruptcy Act, 1883, s. 148; Bankruptcy Rules, 1886, r. 258.

(*a*) *M'Kewen* v. *Rolt*, 28 L. J. Ex. 380; 4 H. & N. 738. See Rules of the Supreme Court, Ord. XXXI., r. 5; *Berkeley* v. *Standard Discount Company*, 13 Ch. D. 97.

(*b*) *Steward* v. *Dunn*, 11 M. & W. 63.

(*c*) *Corpe* v. *Glyn*, 3 B. & Ad. 801.

(*d*) *Steward* v. *Dunn*, 12 M. & W. 655.

officer at the commencement of the suit.(*e*) But in an action by a public officer, a plea denying that the copartnership was at the commencement of the action carrying on the trade or business of bankers, in addition to pleas of *non assumpsit* and of accord and satisfaction, will be allowed.(*f*)

Death, Resignation, or Removal.—The death, resignation, or removal of a public officer will not abate any action, suit, or proceeding commenced by, or on behalf of, or against the copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of the copartnership for the time being.(*g*) If the public officer dies during the progress of an action, a suggestion of his death, and of the appointment of his successor, should be entered on the proceedings before the next step is taken, otherwise they may be set aside for informality.(*h*)

A *cognovit actionem*, given to a public officer, was considered to be sufficient, after his removal, to authorise a succeeding public officer to enter up judgment in his own name.(*i*) To enter it up in the name of the officer, in whose time the *cognovit* was given, would be erroneous.(*k*)

When the public officer died after judgment obtained in an action, and after the issuing of a writ of *ca. sa.*, but before its execution, it was held this did not cause the

(*e*) *Needham* v. *Law*, 11 M. & W. 400. *Quære*, whether this is so now under the powers of alternative pleading given by the Rules of the Supreme Court. See Order XX., r. 6.

(*f*) *Roe* v. *Fuller*, 7 Ex. 220; 21 L. J. Ex. 104.

(*g*) 7 Geo. 4, c. 46, s. 9. And see now Rules of the Supreme Court, 1883, Order XVII., r. 1. and Order L., rr. 1, 4.

(*h*) *Barnewall* v. *Sutherland*, 19 L. J. C. P. 290; 14 Jur. 720; 9 C. B. 380; *Paterson* v. *Ironside*, 14 Jur. 722 n. See Rules of the Supreme Court, Order XLII., and *Crane* v. *Loftus*, 24 W. R. 93.

(*i*) This seems to be the effect of the judgment in *Webb* v. *Taylor*, 1 D. & L. 676. But a judge's order by consent has now almost entirely superseded the practice of *cognovits*. See "Archbold's Practice," pp. 248, 249.

(*k*) See 1 D. & L. 687; *Probin* v. *Locock*, 1 Dowl. (N.S.) 197.

action, or the proceedings consequent on it, to abate, and that, therefore, the defendant could be taken in execution.(*a*)

In equity, it was ruled, as there was no change of interest, it was unnecessary to file any supplemental bill in order to make a new registered public officer a party to the suit.(*b*)

Judgment against.—When a plaintiff obtains judgment against a public officer, he may issue execution against him without first suing out a *scire facias*, for he is already a party to the record.(*c*)

Indemnity.—A public officer, in whose name any suit or action has been commenced, prosecuted, or defended, sustaining any loss, damages, costs, or charges will be entitled to reimbursement out of the funds of the copartnership, or, in failure thereof, to contribution from the other members, as in a case of an ordinary partnership.(*d*)

Criminal Proceedings.—Prosecutions by public officers on behalf of the company, and their criminal liability, will be treated of in the next Chapter.

(*a*) *Todd* v. *Wright*, 16 L. J. Q. B. 311 ; *Ellis* v. *Griffiths*, 16 M. & W. 106.

(*b*) *Butchart* v. *Dresser*, 16 L. J. Ch. 198 ; 10 Hare, 453.

(*c*) *Harwood* v. *Law*, 7 M. & W. 203. See further, 7 Geo. 4, c. 46, s. 12.

(*d*) Section 14.

CHAPTER LIII.

CRIMINAL LIABILITY OF MEMBERS AND OFFICERS OF BANKING COMPANIES.

THE members of the copartnerships either established beyond sixty-five miles from London under the 7 Geo. 4, c. 46, or established in London, or within sixty-five miles of London under the 3 & 4 Will. 4, c. 98, s. 3, may be prosecuted in the name of their public officer for any misdemeanor or felony committed by them against these copartnerships as if they were actually strangers.(*e*) A clerk may, therefore, be convicted of embezzling or stealing the property of one of these copartnerships, although he is a shareholder.(*f*) The property may be alleged in an indictment for larceny or for embezzlement to belong to one of the public officers or to one of the members named and others.(*g*) The members of banking companies formed under the 7 & 8 Vict. c. 113, or registered under the 20 & 21 Vict. c. 49, or the Companies Act, 1862,(*h*) committing fraudulent or other criminal acts against their company, will be liable to prosecution at the suit of, and in the registered or corporate name of that particular company.

The legislature has created certain specific acts of directors, members, managers, and public officers misdemeanors, to which it will be necessary to refer in detail.

It may be mentioned that banking copartnerships formed under the provisions of the 7 Geo. 4, c. 46, are public companies ;(*i*) and banking companies registered

(*e*) 3 & 4 Vict. c. 111, s. 2 ; made perpetual by 5 & 6 Vict. c. 85.

(*f*) *Reg.* v. *Atkinson*, Car. & M. 525 ; 2 Mood. C. C. 278.

(*g*) 7 Geo. 4, c. 64, s. 14 ; *Reg.* v. *Pritchard*, 30 L. J. M. C. 169 ; 8 Cox C. C. 461.

(*h*) See section 18.

(*i*) See *Macintyre* v. *Connell*, 20 L. J. Ch. 284 ; *Graham* v. *Connell*, 19 L. J. Ex. 361.

under the Companies Act, 1862, are bodies corporate within the scope of the following enactments.

Fraudulently appropriating the Property of the Company.—A director, member, or public officer of a body corporate or public company who fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of the body corporate or public company, any of the property of the body corporate or public company, is guilty of a misdemeanor.(*a*)

Keeping Fraudulent Accounts.—A director, public officer, or manager of a body corporate or public company, who receives or possesses himself of any of the property of the body corporate or public company, otherwise than in payment of a just debt or demand, and with intent to defraud omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of the body corporate or public company, is guilty of a misdemeanor.(*b*)

Falsifying or destroying Accounts or Documents.—A director, manager, public officer, or member of a body corporate or public company who, with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, or valuable security belonging to the body corporate or public company, or makes or concurs in the making of any false entry, or omits or concurs in omitting any material particular in any book of account or other document, is guilty of a misdemeanor.(*c*)

Publishing False Statements or Balance Sheets.—A director, manager, or public officer of a body corporate or public company making, circulating, or publishing, or concurring in making, circulating, or publishing any written statement or account which he shall know to be

(*a*) 24 & 25 Vict. c. 96, s. 81.
(*b*) *Ibid.* s. 82.
(*c*) *Ibid.* s. 83.

false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of the body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to the body corporate or public company, or to enter into any security for the benefit thereof, will be guilty of a misdemeanor.(*d*)

A false representation by an officer or a servant of a company, even though when made at the bank, is not for criminal purposes the representation of the company.(*e*) A false representation, in order to be the representation of the company, must be made by a report adopted at a general meeting, and put forth to the public either intentionally or circulated in the ordinary course of business.(*e*)

The directors of a bank are liable also to be indicted for a conspiracy to defraud by publishing false balance sheets, and circulating false reports as to the condition and solvency of their bank, and issuing new shares to the public, at a time when they know the bank to be in a state of insolvency. The manager will be equally liable with the directors under such circumstances, where he has the chief control and management of all the affairs and transactions of the bank.(*f*)

When the manager and the secretary of a banking company were indicted for making and publishing false statements of the affairs of the bank, and conspiring together to do so, the prosecutors were put to their election as to the counts on which they would rely, and having elected to rely on the counts for conspiracy, it was not enough to prove that they made and put forth statements intended and calculated to deceive, unless they had entered into a precedent and fraudulent conspiracy to do so.(*g*)

(*d*) 24 & 25 Vict. c. 96, s. 84.
(*e*) *Ex parte Frowd*, 9 W. R. 328; 3 L. T. (N.S.) 843.
(*f*) *Reg.* v. *Esdaile*, 1 F. & F. 213; 7 Cox C. C. 442. See als[illegible] *Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 48; 46 L. J. M. C. 145.
(*g*) *Reg.* v. *Burch*, 4 F. & F. 407.

With respect to the foregoing misdemeanors, it is provided, as in the case of bankers fraudulently misapplying or disposing of securities or property intrusted to their care, that the parties are not to be privileged from answering questions in relation to the charges in any civil proceedings, including bankruptcy or insolvency proceedings, but on making disclosures in any compulsory proceeding, except bankruptcy or insolvency proceedings, they are not liable to a criminal prosecution.(*a*)

Neither is any criminal prosecution for the commission of any of these misdemeanors to affect or to prejudice any remedy or right at law or in equity against the delinquent parties.(*a*) Convictions(*b*) are not, however, to be admissible in evidence in civil proceedings.(*c*)

The Companies Act, 1862, and the Companies (Winding-up) Act, 1890, contain special provisions for dealing, on the winding up of a company, with delinquent directors and other officers. The following are the provisions :—

Power of Court to Assess Damages.—Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of

(*a*) 24 & 25 Vict. c. 96, ss. 85, 86 ; 53 & 54 Vict. c. 71, s. 27.

(*b*) The punishment on conviction for any of these misdemeanors is defined by section 75 of the 24 & 25 Vict. c. 96, to be penal servitude for not more than seven nor less than three years (by 54 & 55 Vict. c. 69, s. 1, sub-sects. 1, 2), or imprisonment for not more than two years, with or without hard labour. These misdemeanors, however, cannot be prosecuted or tried at quarter sessions (section 87).

(*c*) 24 & 25 Vict. c. 96, s. 86.

such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay(*d*) any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. The provisions of this section shall apply in the winding-up of any company under the Companies Acts, whether the same is being wound up by or subject to the supervision of the Court or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender is criminally responsible.(*e*)

By the Companies (Winding-up) Act, 1893,(*f*) an order for payment of money made by the Court under the above section is a final judgment within the meaning of paragraph (*g*.) of sub-section (1) of section 4 of the Bankruptcy Act, 1883. The effect of this enactment is to make it an act of bankruptcy on the part of a judgment debtor who fails to comply with a bankruptcy notice requiring him to make such payment.

Falsification of Books.—If a director, officer, or contributory of a company winding-up should be found to have destroyed, mutilated, altered, or falsified any books, papers, writings, or securities, or to have made or been privy to the making of any false or fraudulent entry in

(*d*) Without power of set-off, see *Ex parte Pelly*, 21 Ch. D. 492; and *Flitcroft's Case*, 21 Ch. D. 519.

(*e*) 53 & 54 Vict. c. 63, s. 10. It has been decided under section 165 of the Companies Act, 1862, which is repealed by this section, but practically re-enacted, that bankers are not "officers" within the meaning of the section. *In re Imperial Land Company of Marseilles*, 39 L. J. Ch. 331. Auditors are "officers" within the meaning of section 10 of the Act of 1890. *In re London and General Bank* [1895], 2 Ch. 166, 673; *In re Kingston Cotton Mill Company* [1896], 1 Ch. 6, and see Directors Liability Act, 1890 (53 & 54 Vict. c. 64).

(*f*) 56 & 57 Vict. c. 58.

any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending will be deemed guilty of a misdemeanor, and upon being convicted will be liable to imprisonment for any term not exceeding two years, with or without hard labour.(a)

Prosecution of Delinquent Directors.—Where there is an order winding up a company by the Court, or subject to the supervision of the Court, if it should appear in the course of such winding-up that a past or present director, manager, officer, or member, has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up or of its own motion, direct the official liquidator or the liquidator (as the case may be) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.(b) This application must be made by petition.(c)

Prosecution of Delinquent Directors, Officers, or Members, under a Voluntary Winding-up.—Where the winding-up is altogether voluntary, if it should appear to the liquidators that a past or present director, manager, officer, or member, has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred in the prosecution will be payable out of the assets of the company, in priority to all other liabilities.(d)

The application to the Court for the purpose of instituting the prosecution must be by petition.(c)

(a) 25 & 26 Vict. c. 89, s. 166.
(b) *Ibid.* s. 167.
(c) General Order, 11th November, 1862, rule 51.
(d) 25 & 26 Vict. c. 89, s. 168.

CHAPTER LIV.

ATTACHING FUNDS IN BANKER'S HANDS.

By the Rules of the Supreme Court, 1883, Order XLV., rule 1, it is enacted that "the Court or a judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a judge or an officer of the Court, as such Court or judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order."

Consequently, a customer's balance may be attached by a judgment creditor of the customer to answer his judgment debt.(*e*)

A garnishee order binds only so much of the debt owing to the debtor from a third party as the debtor can honestly deal with at the time the garnishee order *nisi* was obtained and served; consequently, it is postponed to a prior equitable assignment of the debt, even in the absence of

(*e*) See *Hancock* v. *Smith*, 41 Ch. D. 456; *Rogers* v. *Whiteley*, 23 Q. B. D. 236; [1892], A. C. 118; 61 L. J. Q. B. 412. As to what are "debts owing or accruing," see notes to this rule in "Annual Practice."

notice.(*a*) So, it has been held that a judgment creditor has no right to a garnishee order on a balance at a bank, standing to the credit of a broker (the judgment debtor) but really belonging to his clients.(*b*)

Where a banker has been served with a garnishee order attaching all moneys in his hands belonging to his customer, he is not obliged to honour cheques drawn by the customer against the balance in his hands over and above the judgment debt, and his refusal to do so gives no cause for action.(*c*) In this case it will be noticed that the order for attachment attached *all* the money in the banker's hands belonging to his customer: but it seems doubtful whether, notwithstanding the injustice and hardship that such order might entail upon the customer, it is competent for a judge in making the garnishee order to make it so that the amounts of the debts attached should only extend to an amount sufficient to answer the judgment.(*d*)

Joint Debt.—It has been held that the debt, whether legal or equitable, owing by a garnishee to a judgment debtor which can be attached to answer the judgment debt, must be a debt due to the judgment debtor *alone*, and that where it is only due to him jointly with another it cannot be attached.(*e*)

Banker's Lien.—It has been held that a solicitor's general lien does not prevail over a garnishee order,(*f*) but whether this would apply to the case of a banker's lien seems never to have been decided.

Procedure.—By rule 2, "Service of an order that debts, due or accruing to a debtor, under a judgment or order, shall

(*a*) *Ex parte Whitehouse*, 32 Ch. D. 512; *Barclay* v. *Consolidated Bank*, 38 Ch. D. 238; *Davis* v. *Freethy*, 24 Q. B. D. 519.

(*b*) *Hancock* v. *Smith*, 41 Ch. D. 456.

(*c*) *Rogers* v. *Whitely*, 23 Q. B. D. 236; [1892], A. C. 118; 61 L. J. Q. B. 512.

(*d*) See the judgments in the above case.

(*e*) *Beasley* v. *Roney* [1891], Q. B. 509; *McDonald* v. *Tacquah Gold Company*, 13 Q. B. D. 535. It was held by Mr. Justice COLLINS, in chambers, that this applied where the judgment debtor was a partner in a firm. See notes to the above rule in "Annual Practice."

(*f*) *Hough* v. *Edwards*, 1 H. & N. 171; *Birchall* v. *Pugin*, 10 C. P. 397.

be attached, or notice thereof to the garnishee, in such manner as the Court or judge shall direct, shall bind such debts in his hands."(*g*)

By Rule 3, "If the garnishee does not forthwith pay into Court the amount due from him to the debtor liable under a judgment, or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order."(*h*)

By Rule 4, "If the garnishee disputes his liability, the Court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined."(*i*)

By Rule 5, "Whenever it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a judge may order such third person to appear and state the nature and particulars of his claim upon such debt."

Effect of Payment by Garnishee.—By Rule 7, "Payment made by, or execution levied upon, the garnishee under any such proceeding as aforesaid shall be a valid discharge to

(*g*) A garnishee order *nisi* does not create a charge until service on the garnishee. *Hamar* v. *Giles*, 11 Ch. D. 942. A garnishee order absolute is not "a final judgment" within the meaning of sub-section 1 (*g*) of section 4 of the Bankruptcy Act, 1883, upon which to found a bankruptcy notice against the garnishee. See *Ex parte Chinnery*, 12 Q. B. D. 342; *Ex parte Hyde*, 20 Q. B. D. 690; *Ex parte Dennis*, 60 L. T. 348; and as to a winding-up petition, see *Re Combined Weighing Company*, 43 Ch. D. 99.

(*h*) See *Randall* v. *Lithgrow*, 12 Q. B. D. 525.

(*i*) The garnishee must in his affidavit deny that he owes anything to the judgment debtor—a qualified denial is not sufficient. See *Vinall* v. *De Pass* [1892], A. C. 90. An issue under this rule cannot be remitted to a county court. *Eastwood* v. *Whitely*, 82 L. T. Journ. 286. As to setting aside a garnishee order absolute on the ground of a mutual mistake by garnishee and judgment creditor, see *Moore* v. *Peachy*, 66 L. T. 198.

him as against the debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed."(*a*)

Foreign Attachment.—In the city of London funds in the possession of banking partnerships, other than banking corporations, are liable to the process of foreign attachment as existing in the Mayor's Court, though the process must be strictly pursued according to the custom. Fictitious summonses and returns, as formerly resorted to, will render the suit invalid.(*b*) This process is much more extensive in its operation within the ambits of the city jurisdiction, than an attachment of debts under the Rules of the Supreme Court already mentioned.(*c*) Under those rules, it will be observed, debts cannot be attached until judgment has been obtained; whereas, under the custom of the city, debts are attachable for the purpose of compelling the defendant to appear and put in bail to the action in the Lord Mayor's Court.(*c*) Until a city attachment has been dissolved or withdrawn, a banker cannot part with or pay away funds belonging to his customers.(*c*) As regards banking corporations, it has been decided in the House of Lords(*b*) that this process is a personal one, and cannot be applied to a corporation aggregate.

By the National Debt Act, 1870, consols and other public stock are not liable to foreign attachment by the custom of London or otherwise.(*d*)

Funds of Foreign Governments.—Funds of foreign governments, in the hands of bankers as their agents for the payment of the dividends on foreign bonds or stocks, are not attachable at the suit of the creditors of such governments.(*e*)

(*a*) In the absence of fraud this is so, even though the judgment on which the garnishee order was made is subsequently set aside. *Re Smith*, 20 Q. B. D. 321: see also *Mayor of London* v. *London Joint Stock Bank*, 6 App. Cas. 393, 413.

(*b*) *Mayor of London* v. *London Joint Stock Bank*, *supra*.

(*c*) See "Brandon on Foreign Attachment."

(*d*) 33 & 34 Vict. c. 71, s. 10.

(*e*) *Wadsworth* v. *The Queen of Spain*, 17 Q. B. 171.

Under Writ of Extent.—Accounts kept by collectors or receivers of Government taxes with bankers may be seized under a writ of extent at the suit of the Crown against the bankers.(*f*) So, an extent may be issued against a banker, with whom a collector has deposited promissory notes or bills of exchange taken by him in payment of taxes.(*f*) If a collector pays moneys received by him for taxes to a third party who pays the same into his private account with his bankers, and the bankers have knowledge of the fact that the moneys are the moneys of the Crown, an extent may issue against the bankers for the recovery of such moneys.(*g*) If by the terms of the deposits interest is payable by the bankers, that is also recoverable by the Crown.(*f*)

(*f*) *Reg.* v. *Adams*, 2 Exch. 299.
(*g*) *Reg.* v. *Ward*, 2 Exch. 301, n. See further as to a writ of extent *Attorney-General* v. *Leonard*, 38 Ch. D. 622.

CHAPTER LV.

WINDING-UP AND DISSOLUTION OF BANKING COMPANIES.

We propose in this Chapter to state the general outline of the law applicable to the winding-up of banking copartnerships and companies, unable to meet their engagements or to carry out the objects for which they were promoted. For more detailed information, and for the cases decided on the various sections of the Companies Act, 1862, the reader must be referred to those works expressly dealing with Company law.

Banking copartnerships constituted under the 7 Geo. 4, c. 46, or under the 3 & 4 Will. 4, c. 98, or, as to Ireland, under the 6 Geo. 4, c. 42, and not registered as limited or unlimited banking companies under the Companies Act, 1862, must be wound up under the provisions of that statute as unregistered companies.(*a*)

And banking companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, and registered under the 20 & 21 Vict. c. 49, or formed and registered under the Companies Act, 1862, must be wound up under the provisions of the last-mentioned Act.(*b*)

The winding-up will be by a compulsory process, under the direct action and control of the Court,(*c*) or by a voluntary process aided by liquidators appointed by the companies.(*d*) But companies which have not been registered as limited or unlimited banking companies, under

(*a*) 25 & 26 Vict. c. 89, s. 199. As to chartered companies, see *Re Oriental Bank Corporation*, 54 L. J. Ch. 481.

(*b*) *Ibid.* ss. 38, 74, 129, 179, 196. A savings' bank may be wound up under section 199. *Re Cardiff Savings' Bank*, 38 W. R. 571; see also 50 & 51 Vict. c. 47.

(*c*) *Ibid.* s. 79.

(*d*) *Ibid.* s. 129.

the Companies Act of 1862, cannot avail themselves of the voluntary process of winding-up—they must be wound up by the Court of Chancery.(e)

Reversing the order of time in which these banks were established, we will first consider the winding-up of the companies formed and registered under the Companies Act, 1862, as many of its provisions will tend to elucidate the principles applicable to the winding-up of previously existing companies ; secondly, companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, registered under the 20 & 21 Vict. c. 49, and re-registered under the Companies Act, 1862 ; and, thirdly, copartnerships formed under the 7 Geo. 4, c. 46, and the 3 & 4 Will. 4, c. 98, and not registered under the 20 & 21 Vict. c. 49, or under the Companies Act, 1862,—and the respective rights and liabilities of the members and contributories of these companies.

With regard, then, to the winding-up of limited banking companies formed under the Companies Act, 1862, it is to be remembered that the liability of the members is fundamentally and constitutionally limited to the amount unpaid on their respective shares ;(f) consequently, if the shares in these banking companies have been fully paid up, there will be no liability on the part of a past or a present member to contribute to the debts of the company on its being wound up. On the other hand, if the shares have not been fully paid up, a past or a present member may be called upon to contribute to the debts and liabilities of the company the amount remaining unpaid on his shares, and this liability is by section 75 deemed to be of the nature of a specialty debt.(g) It is, however, provided that no past member shall be liable to contribute if he has ceased to be

(e) 25 & 26 Vict. c. 89, s. 199 (2).
(f) *Ibid.* s. 7.
(g) *Ibid.* s. 38 See *In re West of England Bank*, 48 L. J. Ch. 463. As to how far a company is estopped by issuing certificates stating that the shares are fully paid, when they are not, see *Ex parte Bloomenthal* [1896], 2 Ch. 525 ; and *In re Building Estates Brickfield Company*, [1896], 1 Ch. 100.

a member for a period of one year or upwards prior to the commencement of the winding-up ; nor shall he be liable in respect of any debt or liability of the company contracted after the time at which he ceased to be a member ; and no past member shall be liable unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them.(*a*) The commencement of the winding-up for this purpose is the time when the petition is presented to the Court in the case of a compulsory winding-up ;(*b*) and where it is voluntary, the time when the resolution of the company authorizing the winding-up is passed.(*c*) Members will not be entitled to set off dividends and profits due to them as such against the claims of the creditors of the company, or to enter into competition with creditors, although on the final adjustment of their rights amongst themselves, as contributories, their claims in respect of dividends or profits may be taken into account.(*d*)

With these qualifications, members present and past of limited banking companies will be liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves.(*e*)

Compulsory Winding-up.—A compulsory winding-up may be resorted to under the following circumstances,(*f*) viz. :—

(*a*) 25 & 26 Vict. c. 89, s. 38. See *Re Barned's Bank*, L. R. 5 H. L. 28 ; *Webb* v. *Whiffen*, L. R. 5 H. L. 718 ; *Re London and Mediterranean Bank*, 37 L. J. Ch. 536.

(*b*) *Ibid.* s. 84.

(*c*) *Ibid.* s. 130. See *In re Taurine and Company*, 25 Ch. D. 118 ; *In re Emperor Life Assurance Society*, 31 Ch. D. 78 ; *West Cumberland Iron Company*, 40 Ch. D. 361 ; *Weston's Case*, L. R. 4 Ch. 20.

(*d*) *Ibid.* s. 38 (7). *Ex parte Cannon*, 30 Ch. D. 629 ; *Re Dale and Plant*, 43 Ch. D. 255 ; *Houldsworth* v. *Glasgow Bank*, 5 App. Cas. 317.

(*e*) *Ibid.* s. 38.

(*f*) A compulsory order can only be made in the cases stated in the Act. *Re Irrigation Company of France*, 40 L. J. Ch. 435.

(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court.(*g*)

(2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year.(*h*)

(3.) Whenever the company is unable to pay its debts.

(4.) Whenever the Court is of opinion that it is just and equitable that it should be wound up.(*i*)

A company will be deemed unable to pay its debts :—

(1.) Whenever a creditor, to whom the company is indebted in a sum exceeding 50*l*., has served on the company, by leaving at its registered office, a written demand requiring the company to pay his debt, and the company has for three weeks neglected to pay the debt, or to secure or compound for the same, to the reasonable satisfaction of the creditor.

(2.) Whenever an execution on a judgment, decree, or order obtained by a creditor against the company has been returned unsatisfied, wholly or in part.

(3.) Whenever it is proved to the satisfaction of the Court, that the company is unable to pay its debts.

A company, however, will not be regarded as unable to pay its debts simply because it has not paid a debt which it disputes, and which the creditor has not established by action.(*k*)

(*g*) 25 & 26 Vict. c. 89, s. 79 (1). The statute also specifies another reason, viz., whenever the members are reduced in number to less than seven (section 79 (3)), but as this is not likely to occur in a limited banking company, consisting of a numerous body of shareholders, it is not stated in the text.

(*h*) *Ibid*, s. 79. The Court must be satisfied that there has been an intention on the company's part to abandon its business, or that it is unable to carry it on. *In re Metropolitan Railway Warehousing Company*, 15 W. R. 1121.

(*i*) These words refer to matters *ejusdem generis* with the matters mentioned in the four sub-sections. *In re Wear Engine Works*, L. R. 10 Ch. 191.

(*k*) *Re Catholic Publishing Company*, 33 L. J. Ch. 325; *In re*

In the case of a banking company, Lord Justice TURNER expressed an opinion that a winding-up by the Court, rather than a voluntary winding-up, should be adopted in cases of enormous magnitude, where vast interests are at stake—where the most ample powers which the law has given must be required to be exercised—where there have been transactions justifying, if not requiring, investigation; where it may be doubtful whether the property of the shareholders will answer the liabilities, and where there is danger to the creditors of the shareholders escaping from their liabilities.(*a*)

Petition.—A winding-up order will be obtained upon a petition presented to the Court by the company, or by any one or more creditor or creditors(*b*) or contributory or contributories, or by all or any of the above parties together or separately, and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.(*c*) A holder of scrip certificates may petition for a winding-up order, on his clothing himself with the character of a contributory.(*d*) But a holder of fully paid-up shares must show special circumstances to entitle him to an order.(*e*)

Imperial Guardian, &c., Society, L. R. 9 Eq. 447; *In re King's Cross Industrial Dwellings Company*, L. R. 11 Eq. 149. *Re Gold Hill Mines*, 23 Ch. D. 215; and see *Re New Zealand Bank Corporation*, L. R. 4 Eq. 226; *Re British Joint Stock Bank*, 38 W. R. 576; *Re Consolidated Bank*, 14 L. T. 656.

(*a*) *In re Northumberland and Durham District Banking Company*, 2 De G. & J. 378.

(*b*) Including the assignee of the debt. *In re Paris Skating Company*, 5 Ch. D. 959, and the executor of a creditor. *In re Masonic Company*, 32 Ch. D. 373; but not a person claiming unliquidated damages. *Ex parte Gold Hill Mines*, 23 Ch. D. 213.

(*c*) 25 & 26 Vict. c. 89, s. 82.

(*d*) *Ex parte Ellis*, 34 L. J. Ch. 237.

(*e*) *In re Patent Artificial Stone Company*, 34 Beav. 185; *In re London Armoury Company*, 11 Jur. (N.S.) 963; *In re Pioneers of Mashonaland Syndicate* [1893], 1 Ch. 731.

Restraining Actions against the Company.—The Court may, after the petition has been presented, upon the application of the company, or of a creditor or of a contributory, restrain proceedings in actions or suits against the company.(*f*) Applications must now be made to the Court where the actions are pending.(*g*)

When a winding-up order has been made, the Act provides that no suit or action shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as it may impose.(*h*)

The Court is also empowered, at any time after an order has been made for winding-up a company upon the application of a creditor or contributory, to stay proceedings under the winding-up order, either altogether or for a limited time.(*i*) The Court may dismiss the petition with or without costs, or adjourn the hearing, or may make an interim or any other order that it may deem just under the circumstances of the case.(*k*)

The Court is to consult the wishes and interests of the creditors and contributories in all matters connected with the winding-up of the company.(*l*)

Forwarding Order to Registrar.—A copy of the winding-up order is to be forthwith forwarded by the company to the Registrar of Joint Stock Companies, who must make a minute of it in his books relating to the company.(*m*)

(*f*) 25 & 26 Vict. c. 89, s. 85.

(*g*) Under section 24 (5) of Judicature Act, 1873. And see *In re People's Garden Company*, 1 Ch. D. 44; *Rose* v. *Gardden Lodge Company*, 3 Q. B. D. 235; *In re Artistic Colour Printing Company*, 14 Ch. D. 502. The Winding-up Act of 1890 has made no difference in this respect. *Re House Land Investment Trust*, 93 L. T. 459. The Court will not stay a personal action against directors for breach of trust. *Re New Zealand Bank Company*, 39 L. J. Ch. 128.

(*h*) 25 & 26 Vict. c. 89, s. 87. *McEwen* v. *London and Bombay Bank*, 15 W. R. 245.

(*i*) *Ibid.* s. 89.

(*k*) *Ibid.* s. 86.

(*l*) *Ibid.* s. 91.

(*m*) *Ibid.* s. 88.

Voluntary Winding-up.—A banking company may be wound up voluntarily in the events and under the circumstances following, viz. :—

(1.) Whenever the period fixed for its duration by the articles of association has expired, or when it is provided by the articles that the company is to be dissolved, and it has passed a resolution in general meeting requiring the company to be wound up voluntarily.(*a*)

(2.) Whenever the company has passed a special resolution for that purpose.(*a*)

(3.) Whenever it has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.(*b*)

An extraordinary resolution(*b*) for this purpose will be when notice of the resolution has been given and confirmed in the same manner as a special resolution.(*c*)

The winding-up commences to operate from the time when the resolution was passed.(*d*) It will not preclude a creditor from afterwards applying to the Court to have the company wound up by the Court.(*e*) Notice of the special or extraordinary resolution, as the case may be, must be advertised in the *Gazette*.(*f*) The company thenceforth ceases practically to carry on its business, and transfers of shares, unauthorised by the liquidators, will be void, and the status of the members cannot be altered

(*a*) 25 & 26 Vict. c. 89, s. 129 ; see as to general policy of the Act in this respect. *Re Wear Engine Works Company*, L. R. 10 Ch. 191 ; *Rance's Case*, L. R. 6 Ch. 115. The Winding-up Act, 1890 (with the exception of section 10), does not apply to a voluntary winding-up. See section 4.

(*b*) *Ibid.* s. 129.

(*c*) See *ante*, p. 417, for the mode of passing special resolutions, and see section 51.

(*d*) 25 & 26 Vict. c. 89, s. 130. See *Weston's Case*, L. R. 4 Ch. 20.

(*e*) *Ibid.* s. 145. See *Medical Battery Company* (1894), 1 Ch. 444.

(*f*) *Ibid.* s. 132.

in their relations to the company.(h) The corporate character of the company, with its incorporated powers, continues until formally dissolved.(h) When the resolution has been passed and confirmed for winding-up the company voluntarily, the next step will be the appointment of one or more liquidators.(i) On their appointment the powers of the directors determine, unless continued with the sanction of the company or the liquidators.(i) Their duties and powers will be considered in connection with those of the official liquidators. The costs of a voluntary winding-up, including the remuneration of the liquidators, will be payable out of the assets of the company.(k)

Liquidators in a Compulsory Winding-up. — On an order being made for winding up a company the official receiver, if any, attached to the Court for bankruptcy purposes; or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade shall, by virtue of his office, become the provisional liquidator of the company and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such. Any such officer shall be styled the official receiver. When a person other than the official receiver is appointed liquidator of a company, he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Joint Stock Companies and given security in manner prescribed to the satisfaction of the Board of Trade. If any vacancy occurs in the office of

(h) 25 & 26 Vict. c. 89, s. 131.
(i) *Ibid.* s. 133.
(k) *Ibid.* s. 144.

liquidator, the official receiver shall be the liquidator during the vacancy.(*a*) The official receiver on becoming liquidator, whether provisionally or otherwise, may require the appointment of, and the Court may appoint, a special manager of the estate or business of the company other than himself.(*b*)

On the winding-up order being made, the official receiver must summon separate meetings of the creditors and contributories of the company for the purpose of determining whether an application is to be made to the Court for appointing a liquidator in the place of the official receiver, and the Court may make any appointment to give effect to any such determination.(*c*)

In case a liquidator is not appointed by the Court, the official receiver shall be the liquidator of the Company.(*c*)

The liquidator shall take into his custody or under his control all the property, effects, and things in action to which the company is entitled.(*d*)

By section 12 of the Act, 1890, the liquidator of a company which is being wound up by the Court may, with the sanction of the Court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by sections 159 and 160 of the Act of 1862—these are the paying of any class of creditors in full, making compromises or arrangements with creditors or persons having claims against the company, and the compromise of calls and debts.(*e*) And the liquidator of any such company may, without such sanction, exercise any of the other powers conferred on

(*a*) Winding-up Act, 1890, s. 4.

(*b*) *Ibid.* s. 5.

(*c*) Section 6. The Court may refuse, its power being discretionary, to accept the nominee of the creditors and contributories, and leave the official receiver to act. *In re Johannesberg Gold Company* [1892], 1 Ch. 583.

(*d*) Companies Act, 1862, s. 94.

(*e*) The Court must be satisfied as to the propriety of the compromise. *Re Northumberland and Durham Banking Company*, 1 Dr. & Sm. 273; *Re East of England Banking Company*, 41 L. J. Ch. 524. The Court cannot compel a liquidator to compromise debts against his judgment. *Ibid.*

the liquidator by section 95 of the Act of 1862. These are as follows;—

(1.) To sell the property of the company.

(2.) To do all acts and to execute in the name of the company all deeds, receipts, and other documents.

(3.) To prove, rank, claim, and draw a dividend in case of the bankruptcy of any contributory.

(4.) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, and also to raise upon the security of the assets of the company any requisite sum or sums of money.

(5.) To take out, if necessary, in his official name, letters of administration to any deceased contributory.

The exercise of the powers referred to in this section are, however, subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the powers.(*f*)

The liquidator may, with the sanction of the Court or of the committee of inspection, employ a solicitor, or other agent, to take any proceedings, or do any business, which the liquidator is unable to take or do himself.(*g*)

Provisions are made by the recent Act for the making out and submitting to the official receiver a statement of the company's affairs;(*h*) after the receipt of which he must make a report to the Court as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities(*i*) of the company that has failed, the cause of failure, and(*i*) whether further inquiry as to the promotion, carrying on, or failure of the company is desirable. He may also make a further report where, in his opinion, any fraud has been committed by any promoter, director, or other officer of the company.(*k*) The

(*f*) Section 12 (3) of 1890.
(*g*) Section 12 (4).
(*h*) Section 7.
(*i*) Section 8 (1).
(*k*) Section 8 (2).

Court may thereupon order the public examination of any such persons, and the official receiver shall take part in the same.(*a*)

The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up ;(*b*) on the other hand, if any person is aggrieved by any act or decision of the liquidator he may apply to the Court and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just.(*c*)

Liquidators in Voluntary Winding-up.—Under the Companies Act, 1862, s. 133, a liquidator is to be appointed for the purpose of winding-up the affairs of the company and distributing the property. He is appointed by the company in general meeting, and upon his appointment, all the powers of the directors cease except in so far as the company in general meeting, or the liquidator may sanction, the continuance of such powers.(*d*) He is empowered to do all the acts mentioned in section 133 (7) without the sanction of the Court. These acts are similar to those above referred to when dealing with the powers of a liquidator under a winding-up by the Court. In the case of a compromise with creditors the liquidator must obtain the sanction of an extraordinary resolution of the company.(*e*)

A liquidator may apply to the Court to determine any question arising in the matter of the winding-up.(*f*) He may also, whether the winding-up is voluntary or compulsory, apply to the Court for repayment of moneys by delinquent directors under section 10 of the Winding-up Act, 1890.

(*a*) Act of 1890, s. 8 (3), (4).

(*b*) *Ibid.* s. 23.

(*c*) *Ibid.* s. 24. The application is by summons. *Re National Wholemeal Bread Company* [1892], 2 Ch. 457.

(*d*) Act of 1862, s. 133 (5).

(*e*) *Ibid.* s. 159.

(*f*) "In a voluntary winding-up the liquidator may apply to the Court to decide any questions fairly arising in the winding up:" per JESSEL, M.R., *Re Union Bank of Kingston-on-Hull*, 13 Ch. D. 809 ; see also *In re Bank of Gibraltar*, L. R. 1 Ch. 69.

Winding up of Companies existing before 1862.—Banking companies formed under the 7 & 8 Vict. c. 113, or under the 21 & 22 Vict. c. 91, as limited, and respectively registered under the 20 & 21 Vict. c. 49, and the Companies Act, 1862, will be wound up under the latter Act,(*g*) and all its provisions with regard to banking companies, formed and registered since the 2nd of November, 1862, will apply, with this exception, that persons liable at law or in equity, to contribute to the payment of the debts or liabilities of the company contracted prior to registration, and for the adjustment of the rights of the members among themselves, will be contributories in respect of such debts and liabilities.(*h*) The Court may, when the petition for the winding-up has been presented, on the application of a creditor, restrain further proceedings in actions or suits, as well against contributories as against the company,(*i*) and legal proceedings cannot afterwards be commenced against contributories, without the special leave of the Court.(*k*)

So, banking companies established under the 7 & 8 Geo. 4, c. 46, or under the 3 & 4 Will. 4, c. 98, or banking companies not registered as limited or unlimited, under the Companies Act, 1862, will be wound up as unregistered companies(*l*) under that Act, with this exception, that no such company can be wound up voluntarily, or subject to the supervision of the Court.(*m*) The circumstances under which such a company may be wound up are :—

(1.) Whenever it is dissolved, or has ceased to carry on business, or is carrying on business merely for the purpose of winding-up.(*n*)

(*g*) 25 & 26 Vict. c. 89, ss. 179, 180.
(*h*) *Ibid.* s. 196 (5).
(*i*) *Ibid.* s. 197.
(*k*) *Ibid.* s. 198.
(*l*) *Ibid.* s. 199. As to the words "consisting of more than seven members," see *In re Bowling and Welby's Contract* [1895], 1 Ch.
(*m*) *Ibid.* s. 199 (2).
(*n*) *Ibid.* s. 199 (3).

(2.) Whenever it is unable to pay its debts.(*a*)

(3.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.(*a*)

The circumstances under which an unregistered company will be considered as unable to pay its debts are similar to those already detailed in regard to registered companies.(*b*) The Court has a similar power of staying actions commenced by creditors against the company or contributories, on the presentation of the winding-up petition,(*c*) and of prohibiting the commencement of actions against contributories without its leave.(*d*) The rights and liabilities of contributories to creditors and amongst themselves, under the winding-up, remain unaffected by recent legislation as to these copartnerships.(*e*)

Having seen when and under what circumstances banking copartnerships and companies may be wound up, it becomes now necessary to briefly point out the parties who are liable as contributories, and the nature of their liability, and the mode of enforcing it.

Contributories generally.—A contributory is defined, by the Companies Act, 1862, to be every person liable to contribute to the assets of the company, in the event of the same being wound up; and in all proceedings for determining the liability of contributories, any person alleged to be a contributory.(*f*) Every present and (subject to the qualification mentioned on p. 489) every past member of such company is liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights

(*a*) See note (*n*), *ante*, p. 499.

(*b*) 25 & 26 Vict. c. 89, s. 199 (4); and see *ante*, p. 491. As to what is to be deemed a contributory in the event of an unregistered company being wound up, see section 200.

(*c*) *Ibid.* s. 201.

(*d*) *Ibid.* s. 202.

(*e*) *Ibid.* s. 200.

(*f*) *Ibid.* s. 74.

of the contributories amongst themselves.(*g*) By section 75, the liability to contribute is deemed to create a debt of the nature of a specialty.(*h*)

By section 23, the subscribers of the memorandum of association are deemed to have agreed to become members and upon registration of the company shall be entered as members on the register of members, and every person who has agreed to become a member and whose name is entered on the register shall be deemed to be a member.(*i*)

Applicants and Allottees.—"To constitute a binding contract to take shares in a company, when such contract is based upon application and allotment, it is necessary that there should be an application by the intending shareholder, an allotment by the directors of the company of the shares applied for, and a communication by the directors to the applicant of the fact of such allotment having been made."(*k*) An application for shares need not be in writing,(*l*) and it may be withdrawn at any time prior to the acceptance being notified to the applicant. When the acceptance is sent by post the contract becomes binding, when it is in fact posted.(*m*) A withdrawal of an application for shares may be made orally.(*n*)

(*g*) Section 38.

(*h*) *Re West of England Bank*, 48 L. J. Ch. 463.

(*i*) The register, however, is not conclusive (section 98) and a person who has in fact agreed to take shares, but whose name is not on the register at the time of winding-up, may be liable as a member. *Karuth's Case*, L. R. 20 Eq. 506; *Reese Silver Mining Company* v. *Smith*, L. R. 4 H. L. 77, 80; *Onslow's Case*, 57 L. J. Ch. 338; and, on the other hand, a person's name may be removed from the register if it can be shown to have been improperly placed there. See *Shewell's Case*, L. R. 2 Ch. 387; *Fyfe's Case*, L. R. 4 Ch. 768.

(*k*) Per BAGGALLAY, L.J., in *In re Scottish Petroleum Company*, 23 Ch. D. 413, 430; *Re Universal Banking Company*, L. R. 3 Ch. 633.

(*l*) *Ex parte Bloxam*, 33 Beav. 529.

(*m*) *Dunlop* v. *Higgins*, 1 H. L. C. 381; *Hebb's Case*, L. R. 4 Eq. 9; *Ritso's Case*, 4 Ch. D. 732; *Household Fire Insurance Company* v. *Grant*, 4 Ex. D. 216.

(*n*) *Truman's Case* (1894), 3 Ch. 272; *Wilson's Case*, 20 L. T. (N.S.) 962.

Bankrupt's Trustee.—A contributory becoming bankrupt before or after he has been placed on the list of contributories, his trustee will be deemed to be a contributory, and may be called upon to admit proofs against his estate, or to allow payments out of his assets in due course of law of any moneys due from the bankrupt in respect of his liability to contribute, and the estimated value of his liability to future calls may be proved against his estate.(*a*)

Directors.—As to when directors, acting without the necessary qualification in respect of shares prescribed by the memorandum or articles of association, will make themselves liable as contributories in respect of such shares, see pp. 450, 451.

Executors and Administrators.—On the death of a contributory, either before or after being placed on the list of contributories, his personal representatives, heirs, and devisees will be liable in due course of administration to contribution, and such personal representatives, heirs and devisees will be deemed to be the contributories.(*b*)

Executors holding shares merely as such, and *never having taken to them* as beneficial holders, are only liable to the extent of the assets of those whom they represent; the liability is that of the estates of the original holders.(*c*) If, on the other hand, they do accept the shares on behalf of their testator's estate they will become personally liable thereon, though they acquire a right of indemnity against the estate.(*d*) An executor does not make himself personally liable by receiving dividends due on the shares of the testator.(*e*)

(*a*) 25 & 26 Vict. c. 89, ss. 75, 77; *McEwen's Case*, L. R. 6 Ch. 582.

(*b*) *Ibid.* s. 76.

(*c*) *Herefordshire Banking Company*, 33 Beav. 435; 12 W. R. 564; *Buchan's Case*, 4 App. Cas. 595.

(*d*) *In re Leeds Banking Company*, L. R. 1 Ch. 231; *Duff's Executors' Case*, 32 Ch. D. 309.

(*e*) *Hamer's Devisees' Case*, 2 De G. M. & G. 366; *Herefordshire Banking Company*, *supra*.

Married Woman.—If any female contributory marries either before or after she has been placed on the list of contributories, her husband will, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly. (Companies Act, 1862, s. 78.) This section must now be read subject to the recent statutes relating to married women. By the Act of 1882, s. 13, a married woman continues liable on contracts entered into by her before marriage to the extent of her separate property, and is liable as a contributory. On the other hand, by section 14 of the same Act, her husband is only liable on her ante-nuptial contracts to the extent of any property acquired by him through his wife.(*f*)

Infants.—A shareholder who is an infant at the date of the winding-up of the company whose shares he holds, is entitled to have his name removed from the list of contributories ;(*g*) nor does he lose this right by delay.(*h*) The transferor of the shares to the infant would in such a case be liable to be put on the list.(*i*)

Principals and Agents.—A person taking shares, though intending to do so as an agent only for another, will be personally liable as a contributory, unless he states at the time that he accepts only as agent.(*k*) But if he contracts as agent he is not liable, but his principal.(*l*) Where the person, representing himself as an agent, has in fact no

(*f*) As to a married woman taking shares in a company, see *ante*, p. 439, and see *Angus's Case* 1 De G. & Sm. 560 ; *Re London Bombay Bank*, 18 Ch. D. 581 ; *Re West of England Bank*, 12 Ch. D. 284 ; *In re Leeds Banking Company*, L. R. 3 Eq. 781.

(*g*) *Re Asiatic Banking Corporation*, L. R. 5 Ch. 298.

(*h*) *Re Commercial Bank of India*, L. R. 8 Eq. 240.

(*i*) *Curtis' Case*, L. R. 6 Eq. 455 ; *Sasson's Case*, 20 L. T. 424 ; but the company may be estopped from putting the transferor on the list, if on discovering the transferee was an infant they took no steps to remove his name from the register. *Parson's Case*, L. R. 8 Eq. 656 ; *Capper's Case*, L. R. 3 Ch. 458.

(*k*) *Bird, Ex parte*, 33 L. J. Bank. 49.

(*l*) *Muir* v. *Glasgow Bank*, 4 App. Cas. 337, 368.

authority, he will not be liable as a contributory, for the contract was not entered into with him, but he would be liable on an implied contract that he had the authority he represented himself as having, or (if he knew that he had no authority) for fraud.(*a*)

Trustees.—The trustee is liable to be put on the list of contributories and not the *cestui que trust*, nor is his liability limited to the amount of the trust estate.(*b*) A trustee, of course, has his remedy against the *cestui que trust* for indemnification. The same rule applies, although the trustee is merely the nominee of the *cestui que trust*,(*c*) the nominor cannot be put on the list, because, although he is the beneficial owner, the contract was not made with him.(*d*)

Purchasers by means of Misrepresentation.—As to when persons who have been induced to purchase shares in a company through fraud or misrepresentation can repudiate their shares, and as to how far they can do so when the winding-up has commenced, see *ante*, p. 435.

Partners.—As has been stated, *primâ facie*, a partner has no implied authority to take shares for a debt due to the firm.(*e*) Where he has such authority, and the shares are transferred to the firm, the firm are bound, and can be put on the list of contributories.(*f*)

List of Contributories.—As soon as practicable after the order for winding-up has been made, the liquidator settles the list of the contributories.(*g*) In settling this list a

(*a*) *Coventry's Case* (1891), 1 Ch. 202; *Collen* v. *Wright*, 8 E. & B. 647.

(*b*) *Barrett's Case*, *supra*, 4 D. J. & S. 200; *Hoare's Case*, 2 J. & H. 229; *Muir* v. *City of Glasgow Bank*, 4 App. Cas. 337.

(*c*) *King's Case*, L. R. 6 Ch. 196.

(*d*) See *King's Case*, *supra*; *Chapman and Barkers Case*, L. R. 3 Eq. 361; *Williams' Case*, 1 Ch. D. 576; *Coventry's Case* (1891), 1 Ch. 207.

(*e*) *Niemann* v. *Niemann*, 43 Ch. D. 198; see *ante*, p. 255.

(*f*) *Re Land Credit Company of Ireland*, L. R. 8 Ch. 831.

(*g*) 25 & 26 Vict. c. 89, s. 98; see Winding-up Rules, 1890, and *Re English Bank of River Plate* [1892], 1 Ch. 391.

distinction must be made between persons contributories in their own right and persons who are representatives of others or liable for their debts.(*h*)

In the case of a personal representative of a deceased contributory being placed on the list, it will not be necessary to add his heirs or devisees. The heirs or devisees may, however, be added as and when the Court may think fit.(*i*)

On a voluntary winding-up the liquidator appointed by the company has similar powers of settling the list, and the list will be *primâ facie* evidence of the liability of the persons named therein as contributories.(*k*) Persons dissatisfied with the insertion of their names on the list may apply to the Court.(*l*)

Past Members.—There is only one list of contributories as past members (called the B list), and all persons ceasing to be members within the year are liable to be put on it as soon as it appears that the contributions of present members will be insufficient, and that the debts to be paid were contracted previous to their retirement.(*m*) So, a past member of a limited banking company who has transferred his shares within a year of the winding-up is liable (if his transferee has not paid the unpaid capital on his shares, and if the present members' contributions are insufficient) to contribute, together with other past members, to the assets of the company to the full amount of the debts which were due at the date of the transfer, and which were still unpaid at the date of the winding-up.(*n*)

In the case of successive transfers all occurring within the year, the following has been stated to be the rule.(*o*)

(*h*) 25 & 26 Vict. c. 89, s. 99.
(*i*) *Ibid.* s. 99. See Winding-up Rules, 1890, rule 83.
(*k*) *Ibid.* s. 133 (8), (9). See *Webb* v. *Whiffin*, L. R. 5 H. L. 735.
(*l*) *Ibid.* s. 138.
(*m*) *Ibid.* s. 38 (2), (3). See *Brett's Case*, L. R. 6 Ch. 800; *Webb* v. *Whiffin*, L. R. 5 H. L. 711.
(*n*) *Morris's Case, In re Oriental Commercial Bank*, L. R. 7 Ch. 200.
(*o*) "Buckley on Companies" (6th edit.), p. 147.

"If X. has transferred to Y. and Y. to Z., both transfers having been made within a year before the winding-up, on the settling of the B list, both X. and Y. will be placed on it at the same time.(*a*) And although as between themselves X. cannot be called upon to contribute anything until Y. has been exhausted, yet it seems there is nothing to prevent the liquidator from calling upon both X. and Y. simultaneously, or calling upon X. and passing over Y.(*b*) In either case, however, X. has his remedy over against Y. and can call upon him for an indemnity."(*b*)

The funds contributed by the B list of shareholders become part of the general assets of the company, and are not to be applied, preferentially or exclusively, to the payment of those debts which were incurred before the B shareholders retired.(*c*) Compromises with some of the existing members, effected by liquidators with the sanction of the Court, will not operate as a release to past members.(*d*)

Rectifying Register on settling List.—On settling the list of contributories the Court has likewise power to rectify the register of the members of the company, whenever parties have been improperly entered or omitted.(*e*)

Proof of Debts.—For the purpose of ascertaining the debts of the company, the creditors are called upon by the official liquidator, to come in and prove their debts or claims against the company. All debts payable on a contingency, and all claims against the company present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company; a just estimate being made, so far as is possible, of

(*a*) *Humby's Case*, 26 L. T. 936; 5 Jur. (N.S.) 215; W. N. (1872), 126.

(*b*) *Morris' Case*, L. R. 7 Ch. 200. See *Brett's Case*, L. R. 6 Ch. 807.

(*c*) *Webb* v. *Whiffin*, L. R. 5 H. L. 711.

(*d*) *Hudson's Case*, L. R. 12 Eq. 1; *Helbert* v. *Banner*, L. R. 5 H. L. 28; *Nevill's Case*, L. R. 6 Ch. 43.

(*e*) 25 & 26 Vict. c. 89, ss. 35, 98. *Reese River Mining Company* v. *Smith*, L. R. 4 H. L. 64.

the value of all such debts or claims as may be contingent or sounding only in damages.(*f*)

Making Calls on Contributories and Right of Set-off.—The Court is empowered to make calls on the contributories settled on the list to the extent of their liability, for payment of the debts of the company and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories amongst themselves, and in making a call the Court may take into consideration the probability that some of the contributories may fail to pay their proportions.(*g*) By the Winding-up Act, 1890, s. 13, the liquidator shall not make any call without either the special leave of the Court, or the sanction of the committee of inspection. Making a call is within the discretion of the Court; and the call will not be made if the Court is satisfied that there are sufficient assets in the hands of the liquidators; but it will be made if there are only outstanding assets, the realization of which is doubtful both as to amount and time.(*h*) A liquidator under a voluntary winding-up has power to make calls.(*i*) A call, being a statutory liability to contribute to the assets of the company, is not a "mutual debt" within section 10 of the Judicature Act, 1875, and a shareholder, who is a creditor of the company, is not allowed to set-off his debt against a call made on him by the liquidator;(*k*) and this seems to be so even when the company is unlimited,(*l*) nor does the fact that the company

(*f*) 25 & 26 Vict. c. 89, s. 158. All debts owing to unsecured creditors stand upon an equality and must be paid *pari passu*. *Oak Pits Colliery Company*, 21 Ch. D. 329; *Black and Company's Case*, L. R. 8 Ch. 262. The rule in bankruptcy respecting "debts and liabilities provable" are made applicable to the winding up of companies. Judicature Act, 1875, s. 10. See Bankruptcy Act, 1883, s. 37; and see Winding-up Rules, 1890. As to set-off, see *Ex parte Baines* [1892], 2 Ch. 457.

(*g*) 25 & 26 Vict. c. 89, s. 102. *Re Pyle Works*, 44 Ch. D. 583; *Re Cordova Union Gold Company* [1891], 2 Ch. 580.

(*h*) *In re Barned's Bank*, L. R. 5 H. L. 28.

(*i*) 25 & 26 Vict. c. 89, s. 133 (9).

(*k*) *Re Whitehouse*, 9 Ch. D. 595; *Grissell's Case*, L. R. 1 Ch. 528; *Black's Case*, L. R. 8 Ch. 254.

(*l*) *Ex parte Branwhite, West of England Bank*, 48 L. J. Ch. 463; see *contra International Life Assurance Company, Gibb's and West's Case*, 39 L. J. Ch. 271; L. R. 10 Eq. 312.

is being wound up voluntarily make any difference.(*a*) But when all the creditors of the company, whether limited or unlimited, have been paid in full, moneys due on any account whatever to any contributory from the company may be set off against any subsequent call or calls.(*b*) An order for a call is conclusive evidence that the call is due, and all other pertinent matters stated in the order are to be taken to be truly stated as against all persons,(*c*) with the exception of proceedings taken against the real estate of a deceased contributory, when the order will be only *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time when the order was made.(*c*) A right of appeal is, however, given against any order that may be made or that is sought to be enforced against a contributory or his representatives.(*d*)

Nature of Liability.—As has been previously stated, calls made on the winding-up of a banking company, formed under the Companies Act, 1862, will create a specialty debt due from the contributory, and will not, therefore, be barred till the lapse of twenty years.(*e*)

Enforcing Calls.—Payment of the amount due from a contributory on a call may be enforced by order of the Court to be made in Chambers on summons by the liquidator.(*f*) In the case of a voluntary winding-up, application must be made by the liquidator to the Court for its aid to enforce calls.(*g*)

If the representative of a deceased contributory makes default in paying a call, proceedings may be taken for

(*a*) *Re Whitehouse, ante*; *Black's Case, ante*; *Re Colorado Mines Company*. 75 L. T. (N.S.) 145.

(*b*) 25 & 26 Vict. c. 89, s. 101. *Gibb's and West's Case*, L. R. 10 Eq. 312.

(*c*) *Ibid.* s. 106.

(*d*) *Ibid.* s. 124.

(*e*) See *ante*, p. 501.

(*f*) Winding-Up Rules, 1890, rule 95, and see Companies Act, 1862, s. 120.

(*g*) 25 & 26 Vict. c. 89, s. 138.

administering either his personal or real estate and of compelling payment thereout of the calls.(*h*)

A contributory may be arrested upon proof being given to the Court, either before or after making the winding-up order, of his intention to quit or abscond from the United Kingdom for the purpose of evading payment of calls.(*i*) An order for the payment of calls made in England may be enforced in Ireland or Scotland against contributories.(*k*)

Dissolution on Winding-up.—In the case of a compulsory winding-up, a company will be deemed to be dissolved when its affairs have been completely wound up, and an order has been obtained from the Court dissolving the company.(*l*) The official liquidator must report the order to the registrar who will make a minute in his books of the dissolution of the company.(*m*) Should he fail in reporting the order, he will incur a penalty not exceeding 5*l.* for each day of delay.(*n*) In the case of a voluntary winding-up, as soon as the affairs of the company have been fully wound up, the liquidators must make up an account showing the manner in which the winding-up has been conducted, and the property of the company disposed of ;(*o*) and the liquidators are then to call a general meeting of the company for the purpose of laying this account before the meeting, and giving their explanations.(*o*) The liquidators are afterwards to make a return of the holding of the meeting to the registrar, and, on the expiration of three months from the date of the registration of this return, the company will be deemed to have been dissolved.(*p*) If the

(*h*) 25 & 26 Vict. c. 89, s. 105.

(*i*) *Ibid.* s. 118. See *In re Imperial Mercantile Credit Company*, L. R. 5 Eq. 264.

(*k*) *Ibid.* ss. 122, 123.

(*l*) *Ibid.* s. 111.

(*m*) *Ibid.* s. 112.

(*n*) *Ibid.* s. 113. See as to conclusion of liquidation under the Winding-Up Act of 1890, s. 15 (53 & 54 Vict. c. 63).

(*o*) *Ibid.* s. 142.

(*p*) *Ibid.* s. 143.

liquidators fail to make the return, they will incur a penalty not exceeding 5*l.* for every day of default.(*a*)

Abortive Company.—Where a company is not incorporated either according to foreign, or English, law, and, therefore, never in existence as a company, it cannot be wound up under the Companies Act, 1862.(*b*)

But independently of the procedure provided by the Companies Act, 1862, for winding-up and dissolving a banking company, there is another mode which it may be useful to mention. It is usual for promoters to state in their prospectus that they reserve to themselves the right of returning the deposits, with or without certain deductions for preliminary expenses, should the proposed capital not be subscribed, or from any other event the project should fail in their opinion to be practicable. This being a legal stipulation is binding upon all parties and is illustrated by the following case :—

The directors of a projected bank, not being able to carry out the project to its full extent, determined upon winding-up and returning the deposits. Deposits amounting in the whole to two-thirds of the subscriptions had been returned, and the remainder was in course of liquidation. A bill was filed by purchasers of shares or intended shares who were dissatisfied with the termination of the proposed bank ; and it was held, that the directors were justified in the course they had taken, it being morally impossible that the project could have been carried out in its integrity from the events which had happened.(*c*)

Colonial Banks.—The Royal Bank of Australia was wound up in Chancery under the Acts of 1848 and 1849 ; the petitioner for the winding-up order, a shareholder in the bank, being described in his petition as of a place out

(*a*) 25 & 26 Vict. c. 89, s. 143.
(*b*) *In re Imperial Anglo-German Bank*, 26 L. T. (N.S.) 229.
(*c*) *Bank of Switzerland* v. *Bank of Turkey*, 5 L. T. (N.S.) 549.

of the jurisdiction, was ordered to give security for costs before his petition could be heard; and proceedings taken in Scotland against the petitioner, in respect of a debt due from the company, were held to furnish proper ground for a winding-up on his petition.(*d*)

But the Court of Chancery refused to make an order winding-up the Union Bank of Calcutta, established in India in 1829, on the ground that substantial justice could not be done in this country.(*e*)

(*d*) *Ex parte Latta*, 3 De G. & S. 186.
(*e*) *Ex parte Watson*, 3 De G. & S. 253.

CHAPTER LVI.

BANKRUPTCY.

In the following Chapter it is proposed to state, as shortly as possible, the law relating to bankruptcy.

Who may be made Bankrupts.—Generally speaking, every person capable of making a binding contract is also capable of being made a bankrupt, either as a trader or non-trader.(*a*) By the Bankruptcy Act, 1869,(*b*) Sched. I., bankers were expressly declared to be traders liable to the bankruptcy laws; and all persons, it would seem, are to be deemed bankers who act as such, although they may not keep banking houses; but this term does not include an army or navy agent.(*c*) Although the Bankruptcy Act, 1883,(*d*) repeals the Act of 1869 and applies to all persons, whether traders or non-traders, yet the distinction between the two classes of persons is not entirely abolished. For instance, in the case of a bankrupt trader who has not kept proper books in his business(*e*) carried on by him, his discharge *must* be refused, suspended, or granted conditionally.(*f*) The doctrine of reputed ownership applies to traders only, and has no application to non-traders. A non-trader is only liable to the bankruptcy laws in respect of debts contracted since the passing of the Bankruptcy Act, 1861.

Although, as has been stated above, the Act of 1869 is repealed, it is conceived that the definition of trader contained in that Act will still guide the Courts in deter-

(*a*) "Robson on Bankruptcy" (7th edit.), p. 115.

(*b*) 32 & 33 Vict. c. 71.

(*c*) *Ex parte Wilson*, 1 Atk. 217; *Richardson* v. *Bradshaw*, *ibid.* 129. For definition of trader, see Schedule I.

(*d*) 46 & 47 Vict. c. 52.

(*e*) *Quære*, whether the term "business" is more comprehensive than the word "trade."

(*f*) Bankruptcy Act, 1883, s. 28, repealed by Bankruptcy Act, 1890, s. 29 (53 & 54 Vict. c. 71), but re-enacted, with slight variations, by section 8.

mining whether a particular person is or is not a trader for the purposes of the existing bankruptcy laws.

Married Women.—Formerly a married woman was not ordinarily liable to bankruptcy as she could not, as a general rule, enter into binding contracts; but where, by the custom of London, she was trading as a *feme sole*,(*g*) or where her husband was civilly dead,(*h*) or in exile,(*h*) or she was living apart from him under a decree of judicial separation or order of protection, she might be made a bankrupt.(*i*) A married woman, however, could not be made a bankrupt in respect of her separate estate.(*k*)

The Married Women's Property Act, 1882 (which is unaffected by the Bankruptcy Act, 1883), practically puts a married woman for contractual purposes on an equal footing with a *feme sole*, and expressly enacts that a married woman trading separately from her husband(*l*) shall be subject to the bankruptcy laws in respect of her separate property in the same manner as a *feme sole*.(*m*) It will be noticed that the Act only applies to women trading separately from their husbands, although it is difficult to see why they should not be liable to bankruptcy in respect of their separate property whether trading or not.

As a judgment against a married woman is treated as one against her estate and not against her personally, it has been held that a bankruptcy notice under section 4, sub-section 1(*g*), of the Bankruptcy Act, 1883, cannot be issued against a married woman, who is carrying on a trade separately from her husband, and against whom a

(*g*) *La Vie* v. *Phillips*, 3 Burr. 1776; *Ex parte Carrington*, 1 Atk. 206.

(*h*) *Sparrow* v. *Carruthers*, cited 2 W. Bl. 1197; *Ex parte Franks*, 7 Bing. 768.

(*i*) 20 & 21 Vict. c. 85, ss. 21, 25, 26; 41 & 42 Vict. c. 19; *Ramsden* v. *Brearley*, L. R. 10 Q. B. 147; 44 L. J. Q. B. 46.

(*k*) *Ex parte Holland*, L. R. 9 Ch. 307; 43 L. J. Bank. 85; *Ex parte Jones, re Grissell*, 12 Ch. D. 484; 48 L. J. Bank. 109.

(*l*) As to the meaning of "carrying on a trade separately from her husband," see *In re Helsby* [1893], W. N. 189.

(*m*) 45 & 46 Vict. c. 75, s. 1, sub-sect. 5. A married woman having traded and afterwards sold her business is liable to be made bankrupt in respect of debts incurred by her prior to the sale. *In re Dagnall* [1896], 2 Q. B. 407.

creditor has recovered a judgment in the form settled by the Court of Appeal in *Scott* v. *Morley*, 20 Q. B. D. 120.(*a*)

It has also been decided that a judgment recovered against a married woman does not, upon the death of her husband, render her personally liable to pay the judgment debt, so as to entitle the judgment creditor to take bankruptcy proceedings against her upon such judgment.(*b*)

Infants.—An infant cannot be made a bankrupt, unless, perhaps, for necessaries supplied to him, nor can he present a petition against himself,(*c*) nor render himself liable to be made bankrupt by ratifying a debt on attaining his majority.(*d*) It has been held under the Act of 1869 that an infant who has traded cannot be adjudicated a bankrupt on the petition of a person who has supplied him with goods on credit for trade purposes, but to whom he has made no express representation that he is of full age, even though he has previously filed a petition, the proceedings under which have become abortive. Whether, if the infant had expressly represented to the petitioning creditor that he was of full age, an adjudication could be made *quære*. The Infants' Relief Act, 1874, applies to the trading contracts of an infant.(*e*)

If an act of bankruptcy is committed by a firm having an infant partner, a receiving order cannot be made against the firm simply, but can be made against the firm "other than the infant partner;" and if a receiving order has been made against the firm simply it can be amended by the Court under section 105 of the Bankruptcy Act, 1883.(*f*)

Lunatics.—Whether a lunatic can be adjudicated a bankrupt, even for debts contracted whilst sane, seems

(*a*) *In re Lynes; Ex parte M. Lester and Company* [1893], 2 Q. B. 113.

(*b*) *In re Hewett; Ex parte Levene* [1895], 1 Q. B. 328.

(*c*) *Ex parte Jones*, 18 Ch. D. 109; 50 L. J. Ch. 673.

(*d*) 37 & 38 Vict. c. 62; *Ex parte Kibble*, L. R. 10 Ch. 373; 44 L. J. Bank. 63; *In re Rainey*, 3 L. R. Ir. 459.

(*e*) *Ex parte Jones*, *supra*, overruling *Ex parte Lynch*, 2 Ch. D. 227.

(*f*) *Lovell and Christmas* v. *Beauchamp* [1894], A. C. 607.

doubtful(*g*) except, perhaps, with the consent of the Court in Lunacy.(*h*)

Upon a person being found lunatic, the jurisdiction of the Court in Lunacy immediately attaches to his property, including the discretionary powers vested in the Court by sections 117 and 120 of the Lunacy Act, 1890,(*i*) of applying his property for his benefit, and cannot be ousted by a subsequent adjudication in bankruptcy made without the consent of the Court, even assuming such adjudication to be valid and, therefore, the trustee taking the lunatic's property under such an adjudication can only do so subject to the jurisdiction in lunacy.(*k*)

Foreigners.—The English Court of Bankruptcy has *primâ facie* no jurisdiction to make an adjudication in bankruptcy against a foreigner domiciled and resident abroad who has never been in England, even though he is a member of an English firm which has traded and contracted debts in England.(*l*) Nor can the Court direct service of a bankruptcy notice upon a foreigner abroad.(*m*)

Under the Bankruptcy Act, 1869, a foreigner domiciled abroad, who contracted debts in England or abroad, was liable to be made bankrupt if he committed an act of bankruptcy in England although he might have left England before the petition was presented, but he could not be made a bankrupt upon an alleged act of bankruptcy committed abroad.(*n*) Under the Act of 1883, in order to present a petition against a debtor, the debtor must be domiciled in England or have ordinarily resided or have had a dwelling-house(*o*) or place of business in England within a

(*g*) *In re Farnham* [1895], 2 Ch. 799. See further [1896], W. N. 37.
(*h*) *In re Lee*, 23 Ch. D. 216; *Ex parte Cohen*, 10 Ch. D. 183.
(*i*) 53 & 54 Vict. c. 5.
(*k*) *In re Farnham*, *supra*.
(*l*) *Ex parte Blain; In re Sawer*, 12 Ch. D. 522; 41 L. T. 46.
(*m*) *Ex parte Pearson; Re Pearson* [1892], 2 Q. B. 263.
(*n*) *Ex parte Crispin*, L. R. 8 Ch. 374; 42 L. J. Bank. 65; 28 L. T. 483; 28 W. R. 491; *Ex parte Pascal; In re Myer*, 1 Ch. D. 509; 45 L. J. Bank. 81; 34 L. T. 10; 24 W. R. 262.
(*o*) See *In re Nordenfelt, Ex parte Maxim Nordenfelt Guns and Ammunition Company* [1895], 1 Q. B. 151.

year before the date of presenting the petition.(*a*) It would seem, therefore, that a foreigner who, being temporarily in England, contracts a debt and commits an act of bankruptcy abroad would now render himself liable to the bankruptcy laws, and it seems doubtful whether the decisions in *Ex parte Crispin* and *Ex parte Pascal* (*ante*, p. 515 (*n*)) could be fully supported under the Act of 1883.

Undischarged Bankrupt.—An adjudication of bankruptcy against an undischarged bankrupt who has been permitted by the trustee to resume and continue business is good.(*b*)

Companies.—Neither partnerships, associations, nor bodies corporate registered under the Companies Act, 1862, can be adjudicated bankrupt.(*c*) Such companies must be wound up, as explained in a previous Chapter,(*d*) but the winding up of companies is by the Companies Winding-up Act, 1890, transferred to the judge in bankruptcy.

Acts of bankruptcy.

The following are declared to be acts of bankruptcy under the Bankruptcy Act, 1883, as amended by the Bankruptcy Act, 1890 :—

(1.) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally :(*e*)

(2.) That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof :(*f*)

(*a*) Section 6, par. (*d*.). See also *In re Clark* [1896], W. N. 89 (1).
(*b*) *Ex parte Watson*, 12 Ch. D. 380.
(*c*) Section 123.
(*d*) See *ante*, p. 488.
(*e*) That is to say, a conveyance or assignment of *all* his property. See Robson (7th edit.), p. 140. As to when such a transaction comes within 13 Eliz. c. 5, and can be set aside as tending to defeat and hinder creditors, see *Spencer* v. *Slater*, 4 Q. B. D. 13; *Boldero* v. *London Discount Company*, 5 Ex. D. 47; *Twyne's Case*, Sm. L. Ca. (9th edit.), p. 1. The assignment must be by deed. *Re Spackman; Ex parte Foley*, 24 Q. B. D. 728. A conveyance by deed of all the debtor's property except leaseholds such conveyance containing a declaration of trust as to them is sufficient. *In re Hughes* [1893], 1 Q. B. 595; *Re Spackman* considered.
(*f*) For general summary as to the result of the cases decided under this

(3.) That the debtor has, in England or elsewhere, made a conveyance or transfer of his property or any part thereof, or created any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt :(g)

(4.) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of England,(h) or being out of England remained out of England ;(i) or departed from his dwelling-house, or otherwise absented himself ;(k) or begun to keep house :(l)

(5.) That execution against the debtor has been levied by seizure of his goods under process in an action in any Court or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days.(m) Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days:

provision, and as to what amounts to a fraudulent conveyance, see *ante*, p. 183, and *Ex parte Dann*, 17 Ch. D. 26.

(g) This provision is new under the Act of 1883.

(h) See *Ex parte Crispin*, L. R. 8 Ch. 374 ; 42 L. J. Bank. 65. The consequence of his departure must be to delay creditors. *Ex parte Mutrie*, 5 Ves. 576 ; *Holroyd* v *Whitehead*, 3 Camp. 530.

(i) See *Ex parte Barney*, 32 L. J. Bank. 41 ; *Ex parte Crispin, supra* ; *Ex parte Brandon*, 25 Ch. D. 500.

(k) See *In re Alderson ; Ex parte Jackson* [1895], 1 Q. B. 183,

(l) If bankers close the doors and windows of the bank, and their customers cannot obtain admission, this is "beginning to keep house." *Cumming* v. *Bailey*, 6 Bing. 363 : see further *Ex parte Foster*, 1 Rose, 50. This will be inferred from debtor giving an order to be denied to creditors. *Mucklow* v. *May*, 1 Taunt. 479. "Stopping payment" is not of itself an act of bankruptcy. *Hawkins* v. *Whitten*, 10 B. C. 217. As to "dwelling-house," see *In re Nordenfelt* [1895], 1 Q. B. 151.

(m) This provision is new under the Act of 1890. See *Figg* v. *Moore* [1894], 2 Q. B. 690, and *Trustee of Burns-Burns* v. *Brown* [1895], 1 Q. B. 324.

(6.) That the debtor has filed in the Court a declaration of his inability to pay his debts(*a*) or has presented a bankruptcy petition against himself.

(7.) That a creditor having obtained a final judgment against the debtor for any amount, and execution thereon not having been stayed, having served on the debtor in England, or by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he has not within seven days after service of the notice in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either complied with the requirements of the notice or satisfied the Court that he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained :(*b*)

(8.) That the debtor has given notice to any of his creditors that he has suspended or is about to suspend payment of his debts.(*c*)

(*a*) The declaration must be dated, signed, and witnessed according to Form 3 in the Schedule, and filed in the Bankruptcy Court. The witness must be a solicitor, justice of the peace, official receiver, or registrar of the Court. See Rule 135 of the Bankruptcy Rules, 1886. This revives the law prior to 1869.

(*b*) On this provision, see *In re Low* [1891], 1 Q. B. 147; *Ex parte Child* [1892], 2 Q. B. 77; and *Ex parte Alexander* [1892], 1 Q. B. 216; *In re Stogdon* [1895], 2 Q. B. 534. The introduction of the bankruptcy notice is new. Where the petitioning creditor's debt is founded on a judgment obtained by the compromise of an action, the Court may reject the debt as not being a good petitioning creditor's debt if the Court sees that the compromise, although not fraudulent, was unfair and unreasonable. *In re Hawkins, Ex parte Troup* [1895], 1 Q. B. 404. See section 7 of Act of 1883, and Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1.

(*c*) This provision is new under the Act of 1883. See *Crook* v. *Morley* (1891), A. C. 316. It applies to non-traders as well as to traders. *In re Scott* [1896], 1 Q. B. 619; *Trustee of Lord Hill* v. *Rowlands* [1896], 2 Q. B. 124. See these cases also as to what amounts to notice of suspension.

Conditions on which Creditor may Petition.—In order that a creditor may be entitled to present a petition against a debtor the following conditions must be complied with—

(1.) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors must amount to 50*l.*; *and*

(2.) The debt must be a liquidated sum payable either immediately or at some certain future time; *and*

(3.) The act of bankruptcy on which the petition is grounded must have occurred within three months before the presentation of the petition; *and*

(4.) The debtor must be domiciled in England or within a year before the date of the presentation must have ordinarily resided or had a dwelling-house or place of business in England.(*d*)

Debtor's Petition.—A debtor's petition must allege that the debtor is unable to pay his debts, and its presentation shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts and the Court shall thereupon make a receiving order.(*e*)

Receiving Order.—On the presentation of a petition either by a creditor or the debtor the Court may make, subject to certain conditions specified in the Act, an order termed a receiving order. The effect of this order is to vest the bankrupt's estate in the Court of Bankruptcy, and thus it protects the property from any dealings prejudicial to the interests of the creditors, but under the Act power is given to the Court to appoint an interim receiver of the debtor's property prior to the making of the receiving order.(*f*)

(*d*) 46 & 47 Vict. c. 52, s. 6. It will be noticed that all these conditions must be complied with as they are cumulative and not alternative. As to (4.), see *In re Clark* [1896], W. N. 89 (1).

(*e*) *Ibid.* s. 8.

(*f*) *Ibid.* s. 10 (1).

It must be pointed out, however, that the property is still the debtor's, and the debtor must personally sue for the recovery of what may belong to him; anything recovered, however, must be handed to the receiver. The fact of the receiving order being made does not subject the debtor to the disabilities attending a bankrupt.(*a*)

Definition of commencement of bankruptcy.

Under the Act of 1883 the bankruptcy of a debtor has relation back to and commences at the time of the act of bankruptcy being committed, upon which the receiving order has been made; or if the bankrupt is proved to have committed more acts of bankruptcy than one, it has relation back to and commences at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within three months next preceding the date of the petition.(*b*)

When a receiving order has been made against a debtor no creditor to whom the debtor is indebted in respect of any debt provable in the bankruptcy shall have any remedy against the property or person of the debtor in respect of such debt, nor shall commence legal proceedings against the debtor except by leave of the Court; but this provision does not affect the power of a secured creditor from dealing with or realising his security.(*c*)

By section 10, the Court may, after a presentation of a petition, stay any action, execution, or legal process against the property or person of the debtor, and any Court in which proceedings are pending against the debtor may stay such proceedings or allow them to continue upon terms.(*d*)

If after a receiving order has been made the creditors, at the first meeting or any adjournment thereof, resolve that the debtor be adjudicated bankrupt or pass no resolution, or if the creditors do not meet, or if a composition or scheme

(*a*) *Rhodes* v. *Dawson*, 16 Q. B. D. 548; *Re Smith, Ex parte Mason* (1893), 1 Q. B. 323. The principles which govern the annulment of an adjudication in bankruptcy are applicable to the annulment of a receiving order. *In re Dennis* [1895], 2 Q. B. 630. Want of assets is not a sufficient ground for refusing to make a receiving order. *In re Leonard* (1896), W. N. 30.

(*b*) 46 & 47 Vict. c. 53, s. 43. See also 53 & 54 Vict. c. 71, s. 20.

(*c*) *Ibid.* s. 9.

(*d*) *Ibid.* s. 10 (2).

is not accepted within fourteen days after the conclusion of the debtor's examination, or such further time as the Court may allow, the debtor shall be adjudged a bankrupt.(e)

Appointment of Trustee.—By section 21, "where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit(*f*) person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

"The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

"Provided that where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.

"The appointment of a trustee shall take effect as from the date of the certificate.

"The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property. If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days

(*e*) Section 20 (1). If a debtor has failed to carry out the terms of a proposal for composition the Court has no power to refuse an order for adjudication, although it might be to the creditors' advantage. *Ex parte Pinfold* (1892), 1 Q. B. 73.

(*f*) By the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 4, a person shall be deemed not fit to act as trustee of a bankrupt's estate where he has been previously removed from such an office for misconduct or neglect of duty.

from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

"Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

"When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee."

Committee of inspection.

By section 22, as altered by section 5 of the Act of 1890, "the creditors, qualified to vote, may at their first or any subsequent meeting, by resolution, appoint from among the creditors, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons." Creditors so appointed cannot act until their proofs have been admitted.(*a*)

"The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

"The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

"Any member of the committee may resign his office by notice in writing, signed by him, and delivered to the trustee.

(*a*) Act of 1890 (53 & 54 Vict. c. 71), s. 5.

"If a member of the committee becomes bankrupt, or compounds, or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

"Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

"On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

"The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

"If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee."

Descriptions of bankrupt's property divisible amongst creditors.

By section 44, the property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:(*b*)

(1.) Property held by the bankrupt on trust for any other person:(*c*)

(*b*) "Property," as defined by the Act of 1883, s. 168, "includes money, goods, things in action, lands, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

(*c*) This applies both to express and implied trusts. So, property in the hands of a bankrupt factor is protected. *Taylor* v. *Plumer*, 3 M. & S. 562. See also, as to implied trusts, *Ex parte Ellis*, 1 Atk. 101; *Ex parte Barber*, 28 W. R. 522. So also to money in the hands of a trustee, the

(2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(i.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge:(*a*)

cestui que trust having a charge *pro tanto* upon the balance in the hands of the banker of the bankrupt trustee. *Harris* v. *Truman*, 9 Q. B. D. 264; 50 L. J. Q. B. 633; *Ex parte Cooke*, 4 Ch. D. 123; *In re Hallett*, 13 Ch. D. 696; 49 L. J. Ch. 415. Property held on a *bonâ fide* express (and sometimes on an implied) trust is also exempted from the operation of the reputed ownership clause (sub-section iii.). *Ex parte Martin*, 19 Ves. 491; *Harris* v. *Truman*, *supra*; *Ex parte Buck*, 3 Ch. D. 795; *Ex parte Bright*, 10 Ch. D. 566. Again, as we have already seen, property held by the bankrupt for a specific purpose is protected. Thus, bills sent to a banker for a specific purpose and still remaining *in specie* do not pass to the banker's trustee in bankruptcy. See *ante*, p. 135, where the subject has been fully discussed.

Earnings.

(*a*) Money earned by the bankrupt when *carrying on a trade*, as distinguished from mere *personal labour* during his bankruptcy, passes to the trustee. *Ex parte Banks*, 4 Ch. D. 689: 46 L. J. Bank. 74; *Emden* v. *Carte*, 17 Ch. D. 169, 768; 50 L. J. Ch. 492. See also as to personal earnings, *In re Rogers* [1894], 1 Q. B. 425. As a general rule, all such interests as a husband possesses by marriage in his wife's property, and he can dispose of, passes to his trustee on his bankruptcy. *Miles* v. *Williams*, 1 P. & W. 249; *Grey* v. *Kentish*, 1 Atk. 280. As regards her choses in action, see *Mitford* v. *Mitford*, 9 Ves. 87; and as to her right to an equity to a settlement, *Murray* v. *Lord Elibank*, 10 Ves. 90; "White and Tudor's L. C." (3rd edit.), vol. i., p. 388.

Property of wife.

Pay or pension.

The pay, pension, or salary of an officer in the army, navy, or Civil Service, or the pension granted by the Treasury, pass to the trustee. See section 53. Even a pension is inalienable by Indian legislation. *In re Saunders, Ex parte Saunders* [1895], 2 Q. B. 424. So the Court has power to order payment of any part of a salary or income received by the bankrupt other than in the way just mentioned. Section 53. See *Ex parte Huggins*, 21 Ch. D. 85. A mere voluntary allowance made to the bankrupt is not "income" within the section. *Ex parte Wicks*, 17 Ch. D. 70.

Fraud.

As a general rule, property obtained by the bankrupt by fraud, or left with him entirely by mistake, will not pass to his trustee. *Ex parte Barnett*, 3 Ch. D. 123; *Lindsay* v. *Cundy*, 2 Q. B. D. 96; *Ex parte Whittaker*, L. R. 10 Ch. 446; 44 L. J. Bank, 91.

Disclaimer of onerous property.

By section 55, the trustee is enabled to disclaim in writing (see *Wilson* v. *Wallani*, 5 Ex. D. 155), property burdened with onerous covenants, or unmarketable shares, or unprofitable contracts, or unsaleable property, &c. *Ex parte Walton*, 17 Ch. D. 746; *In re West of England Bank*, 12 Ch. D. 288; 48 L. J. Bank. 764; *Ex parte Walton*, 17 Ch. D. 746; *Ex parte Ladbury*, *ibid.* 532; *Ex parte Glegg*, 19 Ch. D. 7. In the case of leases

(ii.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice :(*b*)

(iii.) All goods(*c*) being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.(*d*)

leave to disclaim ought to be obtained (*Ex parte Ladbury, supra; Ex parte Sadler*, 19 Ch. D. 122); but, *quære*, whether he can disclaim after-acquired leaseholds. *In re Clayton and Barclay's Contract* [1895], 2 Ch. 212. Any person injured by such disclaimer may prove to the extent of the injury done to him. Section 55 (7); *Ex parte Blake*, 11 Ch. D. 572. As to the time in which trustee must disclaim, see section 13 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71; *Banner* v. *Johnston*, L. R. 5 H. L. 157; *In re Richardson; Ex parte Harris*, 16 Ch. D. 613. As to the liability of trustee before and after disclaimer, see *In re Sneezum*, 3 Ch. D. 463; 45 L. J. Bank. 137; *Ex parte Dressler*, 9 Ch. D. 252; *Lowrey* v. *Barker*, 5 Ex. D. 170. Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value in respect of his after-acquired property, whether with or without the knowledge of his bankruptcy, are valid against the trustee. *Cohen* v. *Mitchell*, 25 Q. B. D. 267. But see *In re Clarke; Ex parte Beardmore* [1894], 2 Q. B. 393, distinguishing and explaining *Cohen* v. *Mitchell* and following *Ex parte Ford*, 1 Ch. D. 521. This rule does not apply to freeholds (*Re New Land Development Association and Gray* [1892], 2 Ch. 138); but it does apply to leaseholds. *In re Clayton and Barclay's Contract, supra*. As to right of solicitor to retain money paid to him before for services rendered after act of bankruptcy, see *In re Charlwood* [1894], 1 Q. B. 643.

(*b*) An undischarged bankrupt is capable of making a contract; but should the trustee choose to interfere and take the benefit of it, he may, as a general rule, do so. *Herbert* v. *Sayer*, 5 Q. B. 965; *Jameson* v. *Brick and Stone Company*, 4 Q. B. D. 208; *In re Clayton and Barclay's Contract, supra*. Actions for personal torts do not pass. *Beckham* v. *Drake*, 2 H. L. 579. As to trustee's power generally, see section 56. What actions pass to trustee.

(*c*) "Goods" includes chattels personal. Section 168.

(*d*) See "Robson" (7th edit.), p. 513. Choses in action are, by the concluding words of the provision, exempted, except debts due to the bankrupt in the course of his business. Shares, as we have seen, are choses in action Choses in action.

In order to prevent any injustice that might be done to persons having *bonâ fide* dealings with the bankrupt by reason of the relation back of the date of bankruptcy,(*a*) it is, by section 49 of the Bankruptcy Act, 1883, enacted that:—

Protection of *bonâ fide* transactions without notice.

Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment,(*b*) and with respect to the avoidance of certain

for this purpose. *Colonial Bank* v. *Whinney*, 11 App. Cas. 426, *ante*, p. 149. *Aliter*, a debenture of a joint stock company (*Ex parte Rensberg*, 4 Ch. D. 685); and a policy of insurance (*Ex parte Ibbetson*, 8 Ch. D. 519; and see *ante*, p. 147). As to book debts, see *Rutter* v. *Everett* [1895], 2 Ch. 872. As to trust funds, see *In re Mills' Trust* [1895], 2 Ch. 564, and *In re Hallett and Co.* [1894], 2 Q. B. 237.

Possession, order, and disposition.

The goods must have been actually in the possession, order, and disposition of the bankrupt, or constructively so, as where they are in the hands of his agent. *Hornsby* v. *Millar*, 1 E. & E. 192. He must, moreover, have had them in his sole possession, order, and disposition; and, consequently, where the goods of a third person were in the joint possession of a bankrupt and his partner, who was solvent, it was held that they did not pass to the trustee of the former. *Ex parte Dorman*, L. R. 8 Ch. 51; 42 L. J. Bank. 20. See also *Ex parte Fletcher*, 8 Ch. D. 218; *Ex parte Hayman*, *ibid.* 11. As to joint possession of bankrupt and dormant partner, see *Ex parte Lovering*, *Re Murrell*, 24 Ch. D. 31. As to when property has been assigned by a bill of sale given by the bankrupt, see Chapter on Bills of Sale. Goods taken under a distress, or otherwise *rightfully* in the custody of the law, are not within the clause. *Taylor* v. *Eckersley*, 5 Ch. D. 740. As to the necessity of giving notice in the case of equitable deposits to exclude the operation of this clause, see *ante*, p. 147 *et seq.*; and as to the effect of change of firm, see *Ex parte Sprague*, 4 De G. M. & G. 866; *Ex parte Burton*, 1 Gl. & J. 207.

Reputed owner.

The goods must be in the possession of the bankrupt as reputed owner; whether they are so or not is a question of fact. *Ex parte Watkins*, L. R. 8 Ch. 520; 42 L. J. Bank. 50. Possession for any length of time will raise a strong presumption that they are the bankrupt's. See *Lingham* v. *Biggs*, 1 B. & P. 82. On the other hand, that presumption can be rebutted by showing the existence of a well-established usage or custom of trade (a custom which the ordinary creditors, and not only those of a particular class, may be presumed to have known) to leave particular goods in the possession of persons who are not the true owners of them, *Ex parte Powell*, 1 Ch. D. 501; 45 L. J. Bank. 100; *Ex parte Emerson*, 41 L. J. Bank. 20; *Ex parte Watkins*, L. R. 8 Ch. 520; *Ex parte Turquand*, 14 Q. B. D. 636; such, for instance, as letting furniture on hire to an hotel-keeper. *Ex parte Powell*, *supra*; *Crawcour* v. *Salter*, 18 Ch. D. 30. See further on this subject, *Ex parte Hattersley*, 8 Ch. D. 601; *Ex parte Wingfield*, 10 Ch. D. 591.

Consent of true owner.

For definition of the expression "true owner," see Robson (7th edit.), p. 860, note (*y*). As we have seen, it includes an equitable mortgagee. See *ante*, p. 147. The consent may be implied. See Robson (7th edit.), p. 614, and *Great Eastern Railway* v. *Turner*, L. R. 8 Ch. 149; *Ex parte Ward*, *ibid.* 144; 42 L. J. Bank. 17; *Ex parte Hayman*, 8 Ch. D. 11; *Ex parte Bright*, 10 Ch. D. 566; 48 L. J. Bank. 81.

(*a*) See *ante*, p. 520.

(*b*) See *post*, p. 528.

settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(a.) Any payment by the bankrupt to any of his creditors;

(b.) Any payment or delivery to the bankrupt;(c)

(c.) Any conveyance or assignment by the bankrupt for valuable consideration;

(d.) Any contract, dealing,(d) or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely:—

(1.) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(2.) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made,

(c) As to a banker cashing customers' cheques after notice of act of bankruptcy, see *ante*, p. 49. The drawer of a post-dated cheque given for payment is under no obligation to stop its payment before its date for the benefit of a third person. If, for instance, before the date of payment the drawer receives notice of an adjudication of bankruptcy, made against the payee since the delivery of the cheque to him upon an act of bankruptcy committed by him before the delivery, he is not bound, for the benefit of the bankrupt's creditors, to give notice to his bankers not to pay the cheque and thus expose himself to the risk of an action by a *bonâ fide* holder of the cheque for value. If the cheque was originally delivered by the drawer to the payee in good faith and for value, and without notice of an act of bankruptcy previously committed by the payee, on which an adjudication is subsequently made, the transaction was protected by section 94, sub-sect. (3) of the Bankruptcy Act, 1869 (now by section 49 (d) of the Act of 1883), and the trustee in the bankruptcy cannot recover the amount of the cheque from the drawer. When a customer pays a cheque to his bankers with the intention that the amount of it shall be at once placed to his credit, and the bankers carry the amount to his credit accordingly, they become immediately holders of the cheque for value, even though the customer's account is not overdrawn. *Ex parte Richdale, In re Palmer*, 19 Ch. D. 409.

(d) Under the corresponding section of the Act of 1869, an attachment of a debt by a garnishee order was held not to be "a dealing" within this clause. *Ex parte Pillers; Re Curtoys*, L. R. 17 Ch. D. 653; 50 L. J. Ch. 691. Nor is a charging order under section 14 of the Judgments Act, 1838. *In re O'Shea's Settlement* [1895], 1 Ch. 325. See also as to what is a "dealing," *Ex parte Arnold*, 3 Ch. D. 70; *Ex parte Dorman, Re Lake*, L. R. 8 Ch. 51; 42 L. J. Bank. 20. A transaction may be protected although itself an act of bankruptcy. *Shears* v. *Goddard* [1896], 1 Q. B. 406. See also *In re Seaman* [1896], 1 Q. B. 412.

executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction notice(*a*) of any available act of bankruptcy committed by the bankrupt before that time.

Section 45 enacts that—

(1.) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(*a*) The notice may be express or implied. Under the corresponding section of the Act of 1869, the following rule was laid down by MELLISH, L.J., in *Ex parte Snowball*, L. R. 7 Ch. 549: "It appears to us that if a person is proved to know facts which constitute an act of bankruptcy, or is proved to know facts from which a Court or a jury, or any impartial person, would naturally and properly infer that an act of bankruptcy had been committed, he ought to be held to have had notice that an act of bankruptcy had been committed, and that the Court ought not to enter upon the inquiry whether he did in his own mind believe that an act of bankruptcy had been committed, or whether he did in his own mind draw the inference that the bankrupt intended to defeat and delay his creditors. A person may be proved to have had notice that an act of bankruptcy had been committed, either by proof that he had received formal notice that an act of bankruptcy had been committed, or by proof that he knew facts which were sufficient to inform him that an act of bankruptcy had been committed. If he is proved to have received a formal notice he is not allowed to escape from the effect of having had notice by saying he had not read it, when he ought to have read it, or that he did not believe it when he had read it; and we think that if he is proved to have known facts which were sufficient to have informed him that an act of bankruptcy had been committed, he cannot be allowed to escape from the effect of having had notice by saying he did not draw the natural inference from the facts." As to what amounts to notice to an execution creditor of an act of bankruptcy under paragraph 5, *ante*, p. 517, and for the joint effect of that provision and section 45 of the Bankruptcy Act, 1883, see *The Trustee of Burns-Burns* v. *Brown* [1895], 1 Q. B. 324. See also *In re Hobson*, 33 Ch. D. 493. See also, on the subject of notice, *Lucas* v. *Dicker*, 6 Q. B. D. 84; 50 L. J. C. P. 190; *Ex parte Schulte*, L. R. 9 Ch. 409; *Evans* v. *Hallam*, L. R. 6 Q. B. 713; 40 L. J. Q. B. 229; *Ex parte Gilbey*, 8 Ch. D. 248; 47 L. J. Bank. 49. Notice of an *intention* to commit an act of bankruptcy will not suffice. *Ex parte Arnold*, 3 Ch. D. 70; 45 L. J. Bank. 130.

(2.) For the purposes of this act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of Sheriff as to Goods taken in Execution.—By section 11 of the Bankruptcy Act, 1890,(*b*) it is provided—

(1.) Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods, and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2.) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or as the case may be, to the trustee,

(*b*) 53 & 54 Vict. c. 71.

who shall be entitled to retain the same as against the execution creditor.(*a*)

Avoidance of Voluntary Settlements.—By section 47, any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void(*b*) against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void as against the trustee in the bankruptcy unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

"Settlement" shall for the purposes of this section include any conveyance or transfer of property.(*c*) Voluntary settlements can also be set aside under 13 Eliz. c. 5,

(*a*) See as to this section, *Dibb* v. *Brooke* (1894), 2 Q. B. 338; *Bower* v. *Hett* (1895), 2 Q. B. 337; *In re Green* (1895), 2 Ch. 217.

(*b*) "Void" in this section was construed by VAUGHAN WILLIAMS, J., to mean "voidable;" see *In re Beale* (1893), 2 Q. B. 381.

(*c*) See on corresponding section of Act of 1869. *Ex parte Bolland, re Clint*, L. R. 17 Eq. 115; *Ex parte Cox, re Read*, 1 Ch. D. 302.

where their effect is to hinder or delay creditors.(*d*) This section is a reproduction of section 91 of the Act of 1869, except that it is not limited to traders.

Avoidance of Fraudulent Preferences.—By section 48 (1.) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy. (2.) This section shall not affect the rights of any person making title in good faith and for valuable consideration, through or under a creditor of the bankrupt.

The following would seem to be a general summary of the law relating to fraudulent preference :—

In order to bring a case under this section it must in the first place appear that the transaction, &c., relied upon as being a fraudulent preference was made "with a view of giving the creditor a preference over the other creditors." These words (which also occurred in the Act of 1869) have been held to be equivalent in their effect, and to bear the same construction as the word "voluntarily"(*e*) under the law prior to 1869. In considering, therefore, what is or is not a *voluntary* act under this section, the cases decided previous to the Act of 1869, will still be applicable.

Very slight evidence of pressure on the part of the creditor will prevent the transaction from being voluntary.(*f*) Any act, on his part, in short, that can be

(*d*) See *Twyne's Case*, and notes thereto in Sm. L. Cas. (9th edit.), p. 1, and *Ex parte Russell, In re Butterworth*, 19 Ch. D. 588.

(*e*) *Ex parte Bolland, In re Cherry*, L. R. 7 Ch. 24; 20 W. R. 136.

(*f*) *Ex parte Tempest*, L. R. 6 Ch. 70; *Ex parte Craven*, L. R. 10 Eq.

considered as interfering with the debtor's free volition will suffice. Thus, an earnest request by a creditor, although not accompanied by a threat or remonstrance, or very positive demand, would be enough to deprive the payment of that voluntary character which would tend to make it impeachable.(*a*)

Payments in the ordinary course of trade, the honoring bills of exchange presented at their maturity, the payments of debts which have become due in the usual and customary manner, or payments made in fulfilment of a contract, or engagement to pay in a particular manner, or at a particular time, are not open to any objection on the ground of their being voluntary, even although they were made without any express demand by the creditor, unless at the time he had notice of an act of bankruptcy committed by the debtor.(*a*) So, also, a payment made to avoid a distress being levied, is not a voluntary preference.(*b*) Nor is a payment made in consequence, and under fear of civil or criminal proceedings, though such fear was in point of fact without foundation.(*c*) But a threat to bring an action, when the debtor is on the verge of bankruptcy, will not amount to pressure.(*d*) A voluntary preference of a creditor, though it can be set aside as a fraud on the bankruptcy law, is not an act of bankruptcy.(*e*)

Not merely must the payment be voluntary, but there must have existed also an *intention* on the part of the debtor to prefer the creditor,(*f*) and a *knowledge* on the part of the creditor that he was being, in fact, preferred.(*g*)

648; *Smith* v. *Pilgrim*, 2 Ch. 127; *Ex parte Winter*, 44 L. J. Bank. 107; *Ex parte Symmons*, 14 Ch. D. 693; 28 W. R. 803.

(*a*) BACON, V.C., in *Ex parte Blackburn, re Cheeseborough*, L. R. 12 Eq. 358; 40 L. J. Bank. 79.

(*b*) *Stevenson* v. *Wood*, 5 Esp. 200.

(*c*) *Thompson* v. *Freeman*, 1 T. R. 155.

(*d*) *Ex parte Hall, In re Cooper*, 19 Ch. D. 589.

(*e*) *Ex parte Stubbins*, 17 Ch. D. 58.

(*f*) *Ex parte Topham*, L. R. 8 Ch. 614; 42 L. J. Bank. 57; *Ex parte Bolland, In re Cherry*, L. R. 7 Ch. 24; 25 L. T. 648; 20 W. R. 136; *Ex parte London and County Bank*, L. R. 16 Eq. 391.

(*g*) *Ex parte Kevan*, L. R. 9 Ch. 752; *Butcher* v. *Stead*, L. R. 7 H. L. 839; 44 L. J. Bank. 126; 24 W. R. 462; 33 L. T. 541.

It makes no difference that notwithstanding the conduct of the bankrupt, the creditors would get paid in full.(*h*)

This section, as to fraudulent preference, must be clearly understood as applying only where the parties stand in the position of debtor and creditor. As regards trust property, or property held for a specific purpose, or improperly detained from the possession of a third party to whom it has been given up, it has no application.(*i*)

Statement of Affairs.—Section 16 provides that :—

(1.) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form ; verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2.) The statement shall be so submitted within the following times ; (namely,)

(i.) If the order is made on the petition of the debtor within three days from the date of the order.

(ii.) If the order is made on the petition of a creditor, within seven days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

(3.) If the debtor fails without reasonable excuse to comply with the requirements of this section, the

(*h*) *In re Bryant, Ex parte Bryant* (1895), 1 Q. B. 420.

(*i*) *Sinclair* v. *Wilson*, 20 Beav. 324 ; *Ex parte Kelly and Company*, 11 Ch. D. 306 ; 48 L. J. Bank. 65 ; 40 L. T. 404 ; *Ex parte Stubbins*, 17 Ch. D. 58.

Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4.) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or official receiver.

Duties of Bankrupt.—Section 24 provides that :—

(1.) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2.) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably(*a*) required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official

(*a*) See *In re Harris* [1896], W. N. 33.

receiver, special manager, trustee, or any creditor or person interested.

(3.) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4.) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.(*b*)

Powers of Trustee to deal with Property.—By section 56, it is enacted that, subject to the provisions of this Act, the trustee may do all or any of the following things :—

(1.) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.

(2.) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3.) Prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt.

(4.) Exercise any powers, the capacity to exercise which is vested in the trustee under this Act, and exe-

(*b*) An order of committal or refusal to commit is subject to an appeal under section 104, sub-section (2). *Ex parte Ashwin, In re Ashwin*, 25 Q. B. D. 271 ; *Jarmain* v. *Chatterton*, 20 Ch. D. 493.

cute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5.) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it ; and sections fifty-six to seventy-three (both inclusive) of the Act of the session of the third and fourth years of the reign of King William the Fourth (chapter seventy-four), "for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," shall extend and apply to proceedings under this Act, as if those section were here re-enacted and made applicable in terms to those proceedings.

Powers exercisable by Trustee with permission of Committee of Inspection.—By section 57, the trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1.) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same.(*a*)

(2.) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.(*a*)

(3.) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection.

(4.) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit.

(*a*) Under the Act of 1869, the things mentioned in sub-sections (1) and (2) of section 57 of the Act of 1883 could be done by the trustee without the consent of the committee of inspection.

(5.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on.

(7.) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person.(b)

(9.) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.(c)

By section 64:—

(1.) The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself

(b) See *Guy* v. *Churchill*, 40 Ch. D. 481.
(c) Under the Act of 1869, general permission could be given.

to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

(2.) The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family or in consideration of his services, if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

By section 73 :—

(2.) Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services.(*a*)

On an objection by the Board of Trade to the appointment of a trustee in bankruptcy on the ground that his connection with the bankrupt or his estate made it difficult for him to act with impartiality in the interests of the creditors generally, the Court has not to exercise its discretion, but only to consider whether on the facts the objection is valid in point of law. Therefore, where the trustee in bankruptcy would have to investigate his own account as trustee under a deed of arrangement the Court upheld the objection.(*b*)

Sections 66—71 contain new provisions, and they are, therefore, given below *in extenso* :—

Official Receivers.—The Board of Trade may, at any time after the passing of this Act, and from time to time, appoint such persons as they think fit to be

(*a*) See *Ex parte Official Receiver In re Wayman*, 24 Q. B. D. 68.
(*b*) *In re Mardon* [1895], W. N. 152 (2).

official receivers of debtor's estates, and may remove any person so appointed from such office. The official receivers of debtor's estates shall act under the general authority and directions of the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

The number of official receivers so to be appointed, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, shall otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

Where more than one official receiver is attached to the Court, such one of them as is for the time being appointed by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

The Board of Trade may from time to time, by order, direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

An official receiver may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act, administer oaths.

All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee. The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

As regards the debtor, it shall be the duty of the official receiver—

To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under the Debtors Act, 1869, or any amendment thereof, or under this Act,(*a*) or which would justify the Court in refusing, suspending or qualifying an order for his discharge:

To make such other reports concerning the conduct of the debtor as the Board of Trade may direct:

To take such part as may be directed by the Board of Trade in the public examination of the debtor:

To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

As regards the estate of a debtor it shall be the duty of the official receiver—

Pending the appointment of a trustee, to act as *interim* receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof:

(*a*) Section 31 enacts that an undischarged bankrupt obtaining credit to the extent of 20*l*. or upwards from any person without disclosing fact of bankruptcy is guilty of misdemeanor.

To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do :

To summon and preside at the first meeting of creditors :

To issue forms of proxy for use at the meetings of creditors :

To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs :

To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise :

To act as trustee during any vacancy in the office of trustee.

For the purpose of his duties as *interim* receiver or manager the official receiver shall have the same powers as if he were a receiver or manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods. Provided that when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the Board from time to time direct.

The Board of Trade may, at any time after the passing of this Act, and from time to time, with the approval of the Treasury, appoint such additional officers, including official receivers, clerks, and servants (if any) as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

Proof and Payment of Debts and Distribution of Assets.—By section 37 it is enacted that, demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy. A person having notice of any act of bankruptcy, available against the debtor, shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court. If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall for the purposes of this Act be deemed to be a debt not provable in bankruptcy. If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself without the intervention of a jury and may give all necessary directions for this purpose,

and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

"Liability" shall, for the purposes of this Act, include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated; as respects time present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.(*a*)

By the Preferential Payments in Bankruptcy Act, 1888,(*b*) the following debts are to have priority on the distribution of the bankrupt's estate, and are to be paid in full before a dividend is paid on other debts:—

(*a*.) All parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt up to the fifth day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment;

(*b*.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds; and

(*a*) A surety may prove before paying the debt for which he is liable. *Ex parte Delmar, In re Hereparth*, 38 W. R. 752.
(*b*) 51 & 52 Vict. c. 62.

(*c.*) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order.

All other debts are by the principal Act payable *pari passu.* (Section 40 (4).)

By section 28 of the Bankruptcy Act, 1890,(*a*) power is reserved for the landlord to distrain for six months' rent.

Proof in case of Felony.—It would seem that proof cannot be made by a creditor in respect of a claim arising directly out of a felony until the bankrupt has been prosecuted or a prosecution has become impossible. But it would appear that proof may be made for a claim only indirectly connected with a felony, as where bankers allowed a customer to overdraw his account, one of the inducements for their doing so being the deposit of certain bills which subsequently turned out to be forged by the bankrupt.(*b*)

Dividends.—Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

The first dividend, if any, must be declared and distributed

(*a*) 53 & 54 Vict. c. 71. Under the Act of 1883, the landlord was entitled to one year's rent.

(*b*) *Ex parte Leslie*, 20 Ch. D. 131; *Ex parte Elliot*, 3 Mont. & A. 110; *Re Maplebach*, 4 Ch. D. 150; *Ex parte Ball, In re Shepherd*, 10 Ch. D. 667.

within four months after conclusion of the first meeting of creditors, unless the trustee satisfactorily explains the delay to the committee of inspection.

Subsequent dividends must be declared and distributed at intervals of not more than six months (section 58).

Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts (section 59 (1)).

Provision for creditors residing at a distance, &c.

"In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and subject to the foregoing provisions he shall distribute as dividend all money in hand" (section 60).

Right of creditor who has not proved debt before declaration of a dividend.

"Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein" (section 61).

Final dividend.

"When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection be realised without needlessly protracting the trusteeship, he shall

declare a final dividend, but before doing so he shall give notice as provided by the section" (section 62).

No action for Dividend.—No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application (section 63).

Proof by and against Surety.—A surety who has paid the creditor, prior to the bankruptcy of the principal debtor, the whole of the debt, may prove for such amount on the latter's bankruptcy; and if the creditor has tendered his proof, the surety is entitled to stand in his place as regards dividends, securities, &c.,(*a*) in the absence of any agreement to the contrary.(*b*)

Where, on the other hand, it is the surety who becomes bankrupt, it is submitted that under the wording of section 37, the creditor is entitled to prove for the sum due to him; even, before the principal debtor has made default.

Where the surety has been discharged, the creditor, of course, will not be able to so prove. As to the manner in which a surety may be discharged, see *ante*, p. 208. As to a surety's right to prove against his co-surety on the latter's bankruptcy, see *Adkins* v. *Farrington*.(*c*)

Proof by Holder of Bill.—The drawer and indorser of a bill stand in the position of surety for the acceptor who is primarily liable thereon; should, therefore, the holder of the bill release the acceptor, he will lose his right of proving against such parties, unless, indeed, as in the case

(*a*) *Brandon* v. *Brandon*, 3 De G. & J. 324; *Thornton* v. *McKewan*, 1 H. & M. 529; *Hobson* v. *Bass*, L. R. 6 Ch. 792; *Duncan Fox and Company* v. *North Wales Bank*, 6 App. Cas. 1. See also, *ante*, p. 213.

(*b*) *Midland Banking Company* v. *Chambers*, L. R. 4 Ch. 398; *Ex parte National Bank, re Rees*, 17 Ch. D. 98. As to proof against debtor after payment by surety, see *post*, p. 548.

(*c*) 29 L. J. Ex. 345; *Ex parte Snowdon*, 17 Ch. D. 44; Robson (7th edit.), p. 309. The Bankruptcy Act, 1883, contains no express enactment relating to proofs by or against sureties. See section 37.

of suretyship generally, he expressly reserves his rights against them.(*d*)

If, however, he has not in any way released them, he will have a right of proof against all such parties to the bill, provided he has not failed to give proper and due notice of dishonour.(*e*) Such notice, may, however, be dispensed with as against a person who has no right of action or contribution against any other party to the bill, and whom, it is clear, neglect to give notice cannot have damnified,(*f*) and it would be dispensed with if by reason of circumstances it could not be given.(*g*)

So notice is excused as against the drawer of an accommodation bill who has had no effects in the hands of the acceptor during the currency of the bill, or reasonable ground for supposing the bill would be paid.(*h*)

Where the bill is not due at the time of bankruptcy, the holder is nevertheless entitled to prove thereon subject to a rebate of interest at the rate of 5 per cent. per annum from the time when the dividend is declared to that at which the bill would have become due, according to the terms upon which such bill was drawn.(*i*) The indorsee of an overdue bill, since he takes it subject to all equities as previously shown, has only the same right of proof as his indorser had at the time of bankruptcy.(*k*)

If the holder of a bill has received a dividend out of the estate of any one of the parties to it (or, indeed, if any such dividend has been declared), he can only prove for the balance, as against the estate of any other party.(*l*) Generally speaking, however, he is entitled to prove for

(*d*) See *English* v. *Darby*, 2 B. & P. 61; *Strong* v. *Foster*, 25 L. J. C. P. 106; Byles (15th edit.), p. 318.

(*e*) *Ex parte Bingold*, 2 M. & A. 633; *Rohde* v. *Proctor*, 4 B. & C. 517; *Ex parte Baker*, 4 Ch. D. 795.

(*f*) See *Foster* v. *Parker*, 2 C. P. D. 18; 46 L. J. C. P. 77.

(*g*) See Bills of Exchange Act, 1882, s. 50.

(*h*) *Bickerdike* v. *Bollman*, 1. T. R. 405.

(*i*) Bankruptcy Act, 1883, Schedule II., rule 21.

(*k*) *Ex parte Rogers*, Buck, 490; *Ex parte Swan*, L. R. 6 Eq. 344; *In re European Bank*, L. R. 5 Ch. 358; 39 L. J. Ch. 588.

(*l*) *Ex parte Todd*, 2 Rose, 232; *Ex parte Wildman*, 1 Atk. 109; *Ex parte Adam*, 2 Rose, 36.

the full amount against all the parties to the bill, until he has been paid the full 20*s.* in the pound.(*a*) See further on proof upon bills of exchange, &c. *ante*, pp. 135 *et seq.* And for the doctrine in *Ex parte Waring*, see *ante*, p. 143.

When a bill, accepted for the accommodation of the drawer, is deposited by him as security for a debt less than the amount of the bill, the holder is entitled to prove in the bankruptcy of the acceptor for the full amount of the bill, though he cannot receive dividends in excess of the debt due to him by the drawer.(*b*)

Secured Creditor.—A secured creditor may either realise his security, in which case he may prove for the balance, or he may surrender his security and prove for his whole debt. If he should not realise it or surrender it before he can prove at all, he must give particulars of his security as required by the Bankruptcy Rules and must state the value at which he assesses it: he will then be entitled to receive a dividend in respect of the balance of his debt after deducting the value so assessed.(*c*) Where a guarantee limited in amount was given to secure the whole amount then due or owing or thereafter to become due or owing to the bank on the account of S., and the full amount of the guarantee had been paid by the surety; on the bankruptcy of S. the bank were allowed to prove for the whole amount of their debt.(*d*)

Partners.—Partners may petition in the name of the firm.(*e*) If a partner signs for the firm he must add his own signature.(*f*) One partner may prove on behalf of the firm.(*g*)

(*a*) See note (*l*), *ante*, p. 547.
(*b*) *Ex parte Newton*, 16 Ch. D. 330. As to holder's right to securities deposited with acceptor, see "Byles on Bills" (15th Eng. edit.), 476.
(*c*) See Bankruptcy Act, 1883, Schedule II., paragraphs 9—17. For definition of "secured creditor," see section 168; see further *In re Hallett* [1894], 2 Q. B. 256.
(*d*) *In re Sass, Ex parte National Provincial Bank of England, Limited* [1896], 2 Q. B. 12.
(*e*) Bankruptcy Act, 1883, s. 115.
(*f*) Rule 259.
(*g*) Bankruptcy Act, 1883, s. 148.

"Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of a firm without including the others" (section 110). Power to present petition against one partner.

"Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them" (section 111). By Rule 164, an order for adjudication must be made against the partners individually and not in the firm's name. Power to dismiss petition against some respondents only.

"If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat,"(*h*) but "shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts" (section 59 (1)). Joint creditor may prove for purpose of voting.
"Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property."(*i*) "In the case of partners, the joint estate shall be applicable in the first instance in payment of their Joint and separate dividends.

(*h*) Bankruptcy Act, 1883, Schedule I., rule 13.

(*i*) Bankruptcy Act, 1883, s. 59 (2). See *Ex parte Cook*, 2 P. Wms. 500. As to what is "joint" and "separate" estate, see *Ex parte Dear*, 1 Ch. D. 514; 45 L. J. Bank. 22; *Ex parte Manchester Bank*, 12 Ch. D. 917; 48 L. J. Bank. 94; *Ex parte Butcher*, 13 Ch. D. 466; *In re Collie, Ex parte Manchester and County Bank*, 3 Ch. D. 481; 45 L. J. Bank. 149; *Ex parte Buckley*, 16 Ch. D. 513. As to proof by firm against separate estate of one partner, see *Ex parte Sillitoe*, 1 Gl. & J. 374; *Ex parte Harris*, 1 Rose, 437; and as to proof by partner against firm, *Ex parte Maude*, L. R. 2 Ch. 550; *Ex parte Sillitoe*, *supra*; and as to proof by partner against separate estate of co-partner, *Ex parte Maude*, *supra*; *Ex parte Sheen*, 6 Ch. D. 235; *Read* v. *Bailey*, 3 App. Cas. 94. See also *In re Rogers* [1894], 1 Q. B. 425. For full information on this subject, see

joint debts, and the separate estate in payment of their separate debts. Any surplus of the separate estate is to be dealt with as part of the joint estate and any surplus of the joint estate is to be dealt with as part of the respective separate estate in proportion to the right and interest of each partner in the joint estate" (section 40 (3)).

By Rule 260, a bankruptcy petition is deemed to be duly served on the members of a firm if it is served at the principal place of business of the firm in England, on any one of the partners, or upon any person having at the time of service the control or management of the business there.

Service of petition on firm.

Double Proof.—"If a debtor was at the date of the receiving order liable in respect of distinct(*a*) contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts."(*b*)

Set off.—By section 38, "Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more,

"Robson" (7th edit.), pp. 677 *et seq.* As to where there is no partnership estate, see *In re Budgett* [1894], 2 Ch. 557. See also *In re Head* [1894], 1 Q. B. 638.

(*a*) The contracts, though they must be distinct, may be contained in the same instrument. *Ex parte Honey*, L. R. 7 Ch. 178; 41 L. J. Bank. 9.

(*b*) Bankruptcy Act, 1883, Schedule II., rule 18. See *In re Oriental Commercial Bank*, L. R. 7 Ch. 99; *Ex parte Banco de Portugal*, 11 Ch. D. 317; 5 App. Cas. 161; 49 L. J. Bank. 33; *Ex parte Poulson*, De Gex, 79; *Ex parte Adamson*, 8 Ch. D. 807; *Ex parte Findlay*, 17 Ch. D. 334; 50 L. J. Ch. 696.

shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him."(c)

Discharge of Bankrupt.—By section 8 of the Bankruptcy Act, 1890,(d) a bankrupt may at any time after being

(c) The transactions must have been mutual; in other words, it must have been between the same parties and in the same right—thus a debt due to a bankrupt from an executor personally cannot be set off against a debt due from the bankrupt to the executor in his representative capacity, and *vice versâ*. See *Stammers* v. *Elliott*, L. R. 3 Ch. 195; *Hallett* v. *Hallett*, 13 Ch. D. 232; *Bishop* v. *Church*, 3 Atk. 691; *Ex parte Morier*, 12 Ch. D. 491; 49 L. J. Bank. 9. In the same way a debt due from a partnership cannot be set off against the separate debt of an individual partner. *Ex parte Twogood*, 11 Ves. 517; *Lanesborough* v. *Jones*, 1 P. W. 326. It seems, however, that debts not due in the same right may be set off against each other by special agreement. *Kinnerley* v. *Hossack*, 2 Taunt. 170; *Vulliamy* v. *Noble*, 3 Mer. 618. *Quære*, how far it is competent for the parties to exclude by special agreement the operation of the mutual credit clause altogether. *Ex parte Fletcher*, 6 Ch. D. 350; *Ex parte Barnett*, L. R. 9 Ch. 293; 43 L. J. Bank. 87; *Young* v. *Bank of Bengal*, 1 Deac. 622. As to the nature of the cross claims, it has been held a specialty debt can be set off against a simple contract only (*Pedder* v. *Preston*, 12 C. B. (N.S.) 535; *Bailey* v. *Johnson*, L. R. 7 Ex. 263; an unliquidated sum arising out of contract against a liquidated sum (*Booth* v. *Hutchinson*, L. R. 15 Eq. 30; 42 L. J. Ch. 492); and a secured debt against one unsecured (*Ex parte Barnett*, *supra*). A sum payable *in futuro* can under this section be set off against a sum payable at once. *Ex parte Prescot*, 1 Atk. 230; *Alsager* v. *Currie*, 12 M. & W. 751. See further as to what debts may be set-off: *Rawley* v. *Rawley*, 1 Q. B. D. 460; 45 L. J. Q. B. 675; *Ex parte Price; Re Lankester*, L. R. 10 Ch. 648; *Booth* v. *Hutchinson*, *supra*; *Ex parte Bolland*, 8 Ch. D. 225; 47 L. J. Bank. 52. A debtor of a bankrupt cannot set off a bill or note indorsed after the bankruptcy. *Dickson* v. *Evans*, 6 T. R. 57. The transaction must terminate or must have a natural tendency to terminate in a debt. *Naoroji* v. *Bank of India*, L. R. 3 C. P. 444; *Ex parte Bolland*, *supra*. The object of section 38 of the Act of 1883, is that where there are mutual accounts a secret act of bankruptcy should not stop the currency of those accounts; the existence of mutual dealings and accounts protects the credits and debts on each side from the operation of the act of bankruptcy until notice of it. The exact date at which a mutual account is to stop must depend on the circumstances of the case and the nature of the credits; but may and ought to be taken at least up to the date when the person claiming the benefit of section 38 has notice of an act of bankruptcy. See *Elliott* v. *Turquand*, 7 App. Cas. 79, decided under the corresponding section of the Act of 1869. As to the right of a person owing a debt to a bank and buying up its notes after it has stopped payment to set off the amount paid against his debt due to it, see *ante*, p. 354: *Dickson* v. *Cass*, 1 B. & Ad. 343. See further as to set off, p. 296. See also *Palmer* v. *Day and Sons* [1895], 2 Q. B. 618.

(d) 53 & 54 Vict. c. 71.

adjudged bankrupt apply to the Court for an order of discharge. The application shall be heard in open Court.

On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or grant it conditionally. If the debtor has committed a misdemeanor under the Debtors Act, 1869,(*a*) or under the Bankruptcy Act, 1883, or any other misdemeanor connected with his bankruptcy, or any felony connected with his bankruptcy, the Court shall refuse the order for discharge unless for specific reasons the Court otherwise determines. If the debtor's assets are not of a value equal to 10*s*. in the pound on the unsecured liabilities, and he cannot show that the fact has arisen from circumstances for which he is not responsible, or if he has omitted to keep proper books or improperly traded or failed to account for loss of assets, or has been guilty of hazardous speculation, or entered into unnecessary or frivolous litigation, or has given undue preference to creditors within three months preceding the date of the receiving order, or has within a similar period incurred liabilities with a view of making his assets equal to 10*s*. in the pound, or has been previously made a bankrupt or has been guilty of fraud, the Court may refuse the discharge or suspend it for not less than two years or until a dividend of not less than 10*s*. in the pound has been paid, or require the bankrupt to consent to judgment being entered against him for any balance of the debts provable under the bankruptcy which is not satisfied at the date of discharge.(*b*)

By section 30 of the Act of 1883, an order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown, or of any person for any offence against a statute relating to any branch of

(*a*) 32 & 33 Vict. c. 62.

(*b*) For the full provisions, see the Act of 1890 (53 & 54 Vict. c. 71), and the cases thereon in "Chitty's Statutes" (5th edit.), vol. i.

the public revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for such offence, and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent(c) breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

An order of discharge shall release the debtor from all other debts provable in bankruptcy, but by section 10 of the Act of 1890, an order of discharge shall not release the bankrupt from any liability under an affiliation order or a judgment against him in an action for seduction or as co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.(d)

Exception of joint debtors.

"The order of discharge shall not release any person who, at the date of the receiving order, was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him or any person who was surety, or in the nature of a surety for him" (section 30 (4)).

Where a discharged debtor promises, for a new and valuable consideration, but not otherwise, to pay a debt released by such discharge, an action will lie against him for such debt.(e)

All the real and personal property devolving on or acquired by the bankrupt after the close of the bankruptcy belongs to him and not to the trustee, although the bankrupt has not obtained his discharge ;(f) and all the

(c) The word "fraudulent" is new under the Act of 1883. See on this section *In re Greer* [1895], 2 Ch. 217.

(d) See also Act of 1890, sub-section 12 of section 3.

(e) *Jakeman* v. *Cook*, 4 Ex. D. 26 ; 48 L. J. Ex. 165 ; *Heather* v. *Webb*, 2 C. P. D. 1.

(f) *In re Pettit's Estate*, 1 Ch. D. 478 ; 45 L. J. Bank. 63.

property acquired by him after his discharge will belong to him, although before the close of the bankruptcy.(a)

Annulment.

By section 35 it is enacted that where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order annul the adjudication.(b) Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done by the official receiver, trustee, or other person, acting under their authority shall be valid, but the property of the debtor shall vest in such person as the Court may appoint, or in default revert to the debtor himself.

Small bankruptcies.

When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:—

(1.) If the debtor is adjudged bankrupt the official receiver shall be appointed the trustee in the bankruptcy:

(2.) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection:

(3.) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the pro-

(a) *Ebbs* v. *Boulnois*, L. R. 10 Ch. 479. And see *Ex parte Wainwright*, 19 Ch. D. 140.
(b) See *In re Dennis* [1895], 2 Q. B. 630.

visions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made (section 121).

Disqualifications of Bankrupt.—Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

(*a.*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords;

(*b.*) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;

(*c.*) Being appointed or acting as a justice of the peace;

(*d.*) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway board, burial board, or select vestry.

The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(*a.*) The adjudication of bankruptcy against him is annulled; or

(*b.*) He obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part,(*c*)

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

The disqualifications imposed by this section shall extend to all parts of the United Kingdom (section 32).

(*c*) See *In re Lord Colin Campbell*, 20 Q. B. D. 816.

CHAPTER LVII.

BILLS OF SALE.

Bills of sale now governed by Acts of 1878 and 1882.

BILLS of sale are now(*a*) regulated by the Bills of Sale Acts, 1878(*b*) and 1882,(*c*) described respectively as the principal Act and the amendment Act, which are, so far as consistent, to be construed together; the operation, however, of the amendment Act of 1882 is confined to bills of sale given by way of security, and does not apply to any bill of sale registered before the 1st November, 1882, so long as the registration thereof is not avoided by non-renewal or otherwise. All other bills of sale executed since the 1st of January, 1879, are governed by the principal Act of 1878.(*a*) Some small amendments have been made by the Bills of Sale Acts, 1890 and 1891.(*d*)

Objects of the Acts.

The main object of the principal Act was to protect creditors, that of the amendment Act to protect improvident grantors.(*e*)

Definition and elements of a bill of sale.

Sections 4 and 6 of the principal Act describe the various documents which are included in the expression "bill of sale." In general it may be stated that a bill of sale is an instrument in the nature of an assurance,(*f*) by which the property in personal chattels, including such things as are for the purposes of the Bills of Sale Acts made personal chattels, passes from the grantor(*g*) to the grantee either absolutely or as security for a debt, and whereby the

(*a*) It should be stated, however, that bills of sale executed before the 1st January, 1879, are still governed by the Bills of Sale Acts of 1854 (17 & 18 Vict. c. 36) and 1866 (29 & 30 Vict. c. 96), except with respect to (1) the rule of construction as to fixtures and growing crops, and (2) the renewal of registration. See sections 7, 11, and 23 of the Act of 1878 (41 & 42 Vict. c. 31).

(*b*) 41 & 42 Vict. c. 31.

(*c*) 45 & 46 Vict. c. 43.

(*d*) See *post*, pp. 557, 564.

(*e*) *Manchester, Sheffield, and Lincolnshire Railway Company* v. *North Central Waggon Company*, 13 App. Cas. at p. 560, per Lord HERSCHELL.

(*f*) 41 & 42 Vict. c. 31, s. 4.

(*g*) *Ex parte Crawcour*, 9 Ch. D. 419.

holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize(*h*) or take possession of any personal chattels comprised in or made subject to such bill of sale.(*i*)

How made.—A bill of sale other than by way of security is usually, though not necessarily, an assignment by deed. A bill of sale by way of security must, it would seem, be by deed, otherwise it would be void under section 9 of the amendment Act as not in accordance with the form in the schedule to that Act.(*k*)

What included.—Among the documents and instruments declared by section 4 of the principal Act to be included in the expression " bills of sale " are :—

Declaration of trust. " Declarations of trust without transfer." Declarations of trust of personal chattels may be by parol or in writing.(*l*) If in writing the document must be registered as a bill of sale. A letter of hypothecation of goods given by a fruit broker to his bankers as security for an advance, by which he undertook to hold the goods in trust for the bankers and to hand over to them the proceeds, " as and when received," to the amount of the advance, has been held to be a bill of sale as being a declaration of trust without transfer.(*m*)

By the Bills of Sale Acts, 1890(*n*) and 1891,(*o*) declarations of trust of imported goods as described therein are not bills of sale within the Acts of 1878 and 1882.(*p*)

Inventories with receipt. " Inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods." It has, however, been held under this provision in accordance with decisions

(*h*) The power to seize under a bill of sale given by way of security is limited by section 7 of the amendment Act ; see *post*, p. 568.
(*i*) 41 & 42 Vict. c. 31, s. 3.
(*k*) See Appendix.
(*l*) *Jones* v. *Lock*, L. R. 1 Ch. 25.
(*m*) *Reg.* v. *Townshend*, 15 Cox C. C. 466.
(*n*) 53 & 54 Vict. c. 53, s. 1.
(*o*) 54 & 55 Vict. c. 35, s. 1.
(*p*) See *post*, p. 564.

under the general terms of the Act of 1854, that only such inventories and receipts require registration as bills of sale as are themselves the effective means by which the property in the goods to which they relate passes, being thus *assurances;* but that when the sale itself is sufficient to pass the property, the fact that an inventory and receipt is given does not make it an assurance within the Act.(*a*)

Thus, where on a sale by a sheriff under an execution the property in the goods is passed independently of the inventory and receipt given by him, they do not require registration as a bill of sale.(*b*)

A receipt given by a husband for the purchase money of furniture sold by him to his wife, although the furniture remains in the house where they are both living, and there has been no formal delivery, does not require registration as a bill of sale, where it forms no part of the transaction by which the property passes.(*c*)

If, however, an inventory and receipt or a receipt only is intended by the parties to be a part of the bargain to pass the property in the goods, it is within the Act and requires registration as a bill of sale.(*d*)

Other assurances of personal chattels.

Where a contract for the sale of goods within section 17 of the Statute of Frauds is valid solely by virtue of a memorandum in writing, such memorandum is an "assurance of personal chattels" within the principal Act. Thus, where on a sale of farm produce by auction the auctioneer's clerk signed the purchaser's name in the auctioneer's book which was also signed by the auctioneer, and contained the conditions of sale, &c., but no part of the purchase money was paid and the goods remained in the seller's possession, it was held that as the sale would have been

(*a*) *Byerley* v. *Prevost*, L. R. 6 C. P. 144; *Woodgate* v. *Godfrey*, 5 Ex. D. 24; *Marsden* v. *Meadows*, 7 Q. B. D. 80; *Graham* v. *Wilcockson*, 46 L. J. Ex. 55; *Ramsey* v. *Margrett* [1894], 2 Q. B. 18.

(*b*) *Woodgate* v. *Godfrey, supra; Marsden* v. *Meadows, supra.*

(*c*) *Ramsey* v. *Margrett, supra.*

(*d*) *Ex parte Odell*, 10 Ch. D. 76; *Ex parte Hubbard*, 17 Q. B. D. 690; *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41; *Charlesworth* v. *Mills* [1892], A. C. 231; *Ramsey* v. *Margrett, supra.*

void under section 17 of the Statute of Frauds but for the memorandum, such memorandum was an "assurance of personal chattels," and required registration as a bill of sale.(*e*)

An agreement by a purchaser giving to the vendor of goods for shipment a lien on the bills of lading is not an "assurance of personal chattels."(*f*)

Licenses to take possession.

"Licenses to take possession of personal chattels as security for any debt." The latter words of this definition, "security for any debt," are material, and bring such instruments within the operation of the amendment Act, 1882. The words being a re-enactment of a provision in the Act of 1854, decisions under that Act apply. Thus, it has been held that a brewer's lease containing a license and authority to the lessor, in case of default in payment of any sum that may be due and owing to him from the lessee on a balance of account, to take possession of the stock-in-trade and effects of the lessee, was in effect a bill of sale of the personal chattels and required registration as such.(*g*) But a building agreement by which a landowner, on default of the builder in fulfilling the terms of the agreement, was to be at liberty to re-enter and expel the builder and take possession of all building materials then left on the land "as and for liquidated damages," was not a bill of sale within the Act, such license not being "as security for any debt."(*h*) Nor was the right of the landowner under such an agreement defeated by the bankruptcy of the builder.(*i*) But a license to seize building materials where the right to take possession is founded only upon the bankruptcy of the building lessee is contrary to the policy of the bankruptcy

(*e*) *In re Roberts*, 36 Ch. D. 196; and see *Coburn* v. *Collins*, 35 Ch. D. 373.

(*f*) *Ex parte Watson, In re Love*, 5 Ch. D. 35.

(*g*) *Ex parte Hopcraft*, 14 W. R. 168.

(*h*) *Ex parte Newitt*, 16 Ch. D. 522; 44 L. T. 5; and for other instances of licenses to take possession not within the Act, see *Brown* v. *Bateman*, L. R. 2 C. P. 272; *Blake* v. *Izard*, 16 W. R. 108; *Morton* v. *Woods*, L. R. 4 Q. B. 293; *Reeves* v. *Barlow*, 12 Q. B. D. 436.

(*i*) *Ex parte Newitt*, *supra*.

law and cannot be supported as a bill of sale.(*a*) Where a mortgage by a building lessee of the demised premises, together with houses in course of erection and the bricks and other building materials thereon, provided that the mortgagee might sell the building materials independently of the power to enter and take possession of the premises, it was held that this was an "assurance of personal chattels," and must be registered as a bill of sale.(*b*)

A license to seize chattels in default of payment of instalments under an agreement on the hire system is not a bill of sale, for the property in the goods does not pass until the completion of the payments.(*c*) But the true nature, not the form, of the transaction must be regarded, and if the proper inference is that the documents which purport to effect a hiring agreement are, in fact, intended only to create a security, the transaction is within the Bills of Sale Acts and void unless the agreement is registered.(*d*)

Agreements giving charges in equity.

"And also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred." This is declaratory of decisions under the Act of 1854, by which it has been held that an agreement to give a bill of sale, though a valid assignment in equity, cannot be relied upon as equivalent to a bill of sale without involving the consequence that it acquires the character of, and needs registration as, a bill of sale.(*e*) Thus, where brokers supplied goods on credit to traders on the faith of a letter of hypothecation whereby they engaged to hold the goods so supplied at the disposal of the brokers, and to give the

(*a*) *Ex parte Jay; In re Harrison*, 14 Ch. D. 19; *Ex parte Barter*, 26 Ch. D. 510.

(*b*) *Climpson* v. *Coles*, 23 Q. B. D. 465.

(*c*) *Ex parte Crawcour*, 9 Ch. D. 419; *Crawcour* v. *Salter*, 18 Ch. D. 30; *McEntire* v. *Crossley Brothers* [1895], A. C. 457.

(*d*) *In re Watson*, 25 Q. B. D. 27; *Madell* v. *Thomas and Company* [1891], 1 Q. B. 230; *Beckett* v. *Tower Assets Company*, *ibid.* 638.

(*e*) *Ex parte Mackay*, L. R. 8 Ch. 643; *Ashton* v. *Blackshaw*, L. R. 9 Eq. 510.

brokers when required a valid and effectual transfer and assurance of the same, the document was held to be void against the trustee in liquidation for want of registration as a bill of sale; (*f*) and a deed by which a debtor covenants that if a debt is not paid on a certain day named, certain chattels shall be charged with it, and that he will, when required, assign them to the creditor as security, requires registration as a bill of sale. (*g*)

Where trustees in pursuance of powers in a will sold the business of a testator to one of his sons and gave him possession under an agreement by which it was provided that the purchase money should be paid by instalments and that the trustees should have a lien or charge upon the business and effects sold for the purchase money and interest, it was held that this agreement was an agreement giving a charge in equity and operated as a bill of sale. (*h*) An agreement in writing made between a foreign manufacturer and his agent in England by which it was provided that advances made by the agent for expenses should be "covered and secured by the stock of goods which shall be in his hands" was held to create a legal right in the agent based on possession and therefore not to be a bill of sale. (*i*)

An agreement by a clause in an ordinary building contract that "all building or other materials brought by the builder upon the land shall become the property" of the landowner, is not an agreement to which a right in equity to personal chattels is conferred and is not a bill of sale within the principal Act. (*k*) Agreements to give a bill of sale are, however, sometimes relied upon not as bills of sale themselves, but to support bills of sale afterwards given in pursuance of them, which would otherwise be void against trustees in bankruptcy as being given for a past consideration. (*l*)

(*f*) *Ex parte Conning*, L. R. 16 Eq. 414.
(*g*) *Edwards* v. *Edwards*, 2 Ch. D. 291.
(*h*) *Coburn* v. *Collins*, 35 Ch. D. 373.
(*i*) *Morris* v. *Delobbel-Flipo* [1892], 2 Ch. 352.
(*k*) *Reeves* v. *Barlow*, 12 Q. B. D. 436.
(*l*) *Ex parte Hauxwell*, 23 Ch. D. 626, and see *post*, p. 588.

Assignments for the benefit of creditors;

The Exceptions.—An assignment to be within the meaning of this exception must be substantially for the benefit of all the creditors, and there must appear nothing in the deed to exclude any creditor who chooses to accept the composition offered and sign the deed.(*a*) If, however, a deed purporting to be for the benefit of creditors imposes onerous conditions on those who come in, or reserves an unusual benefit to the debtor, it may be held void under the statute of Elizabeth(*b*) as tending to defeat or delay creditors.(*c*) An assignment of the whole of a debtor's property for the benefit of his creditors is an act of bankruptcy.(*d*) Now by the Deeds of Arrangement Act, 1887,(*e*) every such assignment as comes within the meaning of a deed of arrangement as defined by that Act is required to be registered.

Marriage settlements;

A memorandum of agreement for a marriage settlement, although informal and not under seal, is within the exception ;(*f*) but a post-nuptial settlement not made in pursuance of ante-nuptial articles, is not, and must be registered as a bill of sale under the principal Act ;(*g*) it is not, however, unless given by way of security, within the operation of the amendment Act.

Transfer of ship or shares therein;

A transfer or assignment of a ship or share therein is none the less within the exception, because it has not been registered under the Merchant Shipping Act.(*h*) The expression "ship or vessel" is to be taken in a popular and not a technical sense.(*i*)

Transfer of goods

The governing words for the latter members of the

(*a*) *General Furnishing Company* v. *Venn*, 32 L. J. Ex. 220; 2 H. & C. 153; *Johnson* v. *Osenton*, L. R. 4 Ex. 107; *Hadley* v. *Beedom* [1895], 1 Q. B. 646.

(*b*) 13 Eliz. c. 5.

(*c*) *Spencer* v. *Slater*, 4 Q. B. D. 13; *Boldero* v. *London and Westminster Loan, &c., Company*, 5 Ex. D. 47.

(*d*) See *post*, p. 589.

(*e*) 50 & 51 Vict. c. 57.

(*f*) *Wenman* v. *Lyon and Company* [1891], 2 Q. B. 192.

(*g*) *Fowler* v. *Foster*, 28 L. J. Q. B. 210; *Ashton* v. *Blackshaw*, L. R. 9 Eq. 510.

(*h*) *Union Bank of London* v. *Lenanton*, 3 C. P. D. 243, decided under the Merchant Shipping Act, 1854, now repealed by the Act of 1894.

(*i*) *Gapp* v. *Bond*, 19 Q. B. D. 200.

clause of exceptions are, "in the ordinary course of business." The transactions indicated by these exceptions do not include letters of hypothecation accompanying a deposit of goods by merchants or factors, nor pawn tickets given by a pawnbroker, nor, in fact, any case where the object and effect of the transaction are to immediately transfer the possession of the chattels from the grantor to the grantee.(*k*) These are in the nature of pledges and are not within the Acts at all.(*l*) Thus, a trader deposited with his bank, as security for overdraft and further advances, the invoice of goods bought by him on credit and consigned to him by rail, and gave the bank a delivery order requiring the railway company to hold the goods to the order of the bank. The railway company undertook to hold the goods to the order of the bank. A minute of the transaction stating the terms, &c., was entered in the bank ledger and signed by the trader. It was held that although the transaction was not a transfer in the ordinary course of business, yet as the effect of it was to immediately transfer the possession of the goods to the bank, the delivery order and minute did not require registration as a bill of sale.(*m*)

used in the ordinary course of business, &c.

Within the exception comes a letter of hypothecation given in the ordinary course of business by a factor and warehouse-keeper pledging certain goods to secure advances from his bankers, no delivery of the goods being made, but a promise to deliver them on the following morning being added at the foot of the letter.(*n*)

Debentures.

The principal Act does not apply to the debentures of an incorporated company,(*o*) and by section 17 of the amendment Act debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital, stock or goods, chattels, or effects of such com-

(*k*) *In re Hall*, 14 Q. B. D. 393; *Attenborough's Case*, 28 Ch. D. 682.
(*l*) *Grigg* v. *National Guardian Assurance Company* [1891], 3 Ch. 206.
(*m*) *In re Hall*, *supra*.
(*n*) *Ex parte North Western Bank*, L. R. 15 Eq. 69.
(*o*) *In re Standard Manufacturing Company* [1891], 1 Ch. 627.

pany are excepted from the operation of that Act. The section does not, however, exempt debentures of societies registered under the Industrial and Provident Societies Acts from the requirements of the Bills of Sale Acts.(*a*)

Bills of Sale Acts, 1890 and 1891.

Further exceptions have been introduced by the Bills of Sale Acts, 1890(*b*) and 1891,(*c*) by which "an instrument charging or creating any security on, or declaring trusts of, imported goods, given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being re-shipped for export or delivered to a purchaser not being the person giving or executing such instrument, shall not be deemed a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882."

Who may make.—A bill of sale to be good within the Acts must be a document executed by a person in possession or apparent possession of the goods at the time,(*d*) and, if the bill of sale be by way of security, the true, that is, the legal owner of the goods.(*e*)

Personal Chattels.—"Personal chattels," for the purposes of the Bills of Sale Acts, are defined in section 4 of the principal Act.(*f*) Fixtures (other than trade machinery as defined in section 5) and growing crops are made personal chattels *only when separately assigned.*(*f*) Trade machinery, as defined in section 5 of the principal Act,(*g*) is made personal chattels whether separately assigned or not.

Separate assignment.

"Separate assignment" is defined by section 7 of the principal Act(*h*) to be where no interest in the buildings or land passes by the same instrument by which the fixtures or growing crops pass. This definition of separate assignment is made retrospective in its application.(*h*)

(*a*) *Great Northern Railway Company* v. *Coal Co-operative Society* [1896], 1 Ch. 137.

(*b*) 53 & 54 Vict. c. 53, s. 1.

(*c*) 54 & 55 Vict. c. 35, s. 1.

(*d*) *Chapman* v. *Knight*, 5 C. P. D. 314; *Walrond* v. *Goldmann*, 16 Q. B. D. 121.

(*e*) 45 & 46 Vict. c. 43, s. 5; *In re Sarl* [1892], 2 Q. B. 591.

(*f*) See Appendix.

(*g*) See Appendix.

(*h*) See Appendix. See *In re Armytage*, 14 Ch. D. 379, for observations upon the meaning of section 7.

The retrospective operation of this rule of construction can, however, have no application to growing crops, for they were not personal chattels under the Act of 1854,(*i*) and the inclusion of them in the definition of personal chattels in the Act of 1878 is not retrospective. No question, therefore, can arise as to growing crops comprised in deeds executed before the commencement of the Act of 1878.

Documents, therefore, by which fixtures and growing crops are assigned must it appears be registered as bills of sale :— **As to deeds executed before Jan., 1879.**

(*a*.) If executed before the commencement of the principal Act, only where the fixtures (including fixed trade machinery, but excluding growing crops)(*k*) comprised in them are separately assigned or charged within the meaning of section 7 of that Act.(*l*)

(*b*.) If executed since the commencement of the Act, (i.) as regards fixtures, other than trade fixtures, and growing crops, only where they are separately assigned as above: (ii.) as regards fixed trade machinery, defined in section 5, whether they are assigned separately or not ;(*m*) with this qualification, that if they are assigned not as chattels nor with the intention of being dealt with as chattels, *e.g.*, with power to sever them, but merely as part of the premises to which they are affixed, they do not, even though expressly mentioned, come within the Acts.(*n*) **As to deeds executed since Jan., 1879.**

It is often a difficult question of fact to decide what are fixtures, and what are moveables. The question still arises, **What are fixtures?**

(*i*) *Brantom* v. *Griffits*, 2 C. P. D. 212 ; *Ex parte Payne*, 11 Ch. D. 539.

(*k*) *Brantom* v. *Griffits*, 1 C. P. D. 349 ; 2 C. P. D. 212 ; *Ex parte Payne, supra.*

(*l*) *In re Armytage*, 14 Ch. D. 379 ; 42 L. T. 443. The test, under the Act of 1854, as to whether an assignment of trade fixtures required registration was, "had the mortgagee power to deal separately with or disannex the fixtures?" *Ex parte Daglish*, L. R. 8 Ch. 1072 ; *Ex parte Barclay*, L. R. 9 Ch. 576 ; *Ex parte Tweedy*, 5 Ch. D. 559.

(*m*) *Small* v. *National Provincial Bank of England* [1894], 1 Ch 686.

(*n*) *Batcheldor* v. *Yates*, 38 Ch. D. 112 ; *In re Brooke* [1894], 2 Ch. 600.

although it has been much reduced by the provisions as to trade machinery contained in the Act of 1878.

It has been held that a tramway and steam crane placed upon a quarry and bolted to large stones are fixtures,(*a*) but articles standing merely by their own weight are not fixtures.(*b*) Where part of a machine is a fixture, and another and essential part moveable, the latter is also a fixture.(*c*) The fact that the things have been affixed merely for the more convenient user of them, and are removable without injury to the freehold, does not make them the less fixtures.(*d*)

Growing crops afterwards severed.

Growing crops, if assigned together with an interest in the land on which they grow, pass to the grantee without registration of such assignment as a bill of sale ;(*e*) but if afterwards severed by the mortgagor while in his possession are no longer secured to the grantee by the deed, but become personal chattels subject to the Bills of Sale Acts, even though the assignment provides that the mortgagor shall not remove them.(*f*)

Choses in action ;

What not Personal Chattels.—The following have been held to be choses in action and within the exception in section 4 of the principal Act ;—a share in a partnership ;(*g*) book debts due or to become due ;(*h*) the rights under a hiring agreement ;(*i*) a reversionary interest in personal chattels expectant on the death of the tenant for life.(*k*)

(*a*) *In re Armytage*, 14 Ch. D. 379 ; 42 L. T. 443.

(*b*) *Mather* v. *Fraser*, 2 K. & J. 536 ; 25 L. J. Ch. 361.

(*c*) *Ibid.* And for other decisions as to what are fixtures, see *Metropolitan Counties Society* v. *Brown*, 26 Beav. 454 ; *Ex parte Astbury*, L. R. 4 Ch. 630 ; *Longbottom* v. *Berry*, L. R. 5 Q. B. 123 ; *Turner* v. *Cameron*, *ibid.* 306 ; *Holland* v. *Hodgson*, L. R. 7 C. P. 328 ; *Haley* v. *Hammersley*, 3 De G., F. & J. 587 ; *Reg.* v. *Inhabitants of the Parish of Lee*, L. R. 1 Q. B. 241, cited with others in "Fisher on Mortgages" (4th edit.), p. 23.

(*d*) *Climie* v. *Wood*, L. R. 3 Ex. 257 ; 4 Ex. 328, following *Cullwick* v. *Swindell*. L. R. 3 Eq. 249 ; and see *Holland* v. *Hodgson*, *supra*, and cases there cited.

(*e*) *Brantom* v. *Griffits*, 2 C. P. D. 212 ; *Ex parte Payne*, 11 Ch. D. 539 ; *Ex parte National Mercantile Bank*, *In re Phillips*, 16 Ch. D. 104 ; 50 L. J. Ch. 231.

(*f*) *Ex parte National Mercantile Bank*, *In re Phillips*, *supra.*

(*g*) *In re Bainbridge*, 8 Ch. D. 218.

(*h*) *Tailby* v. *Official Receiver*, 13 App. Cas. 523.

(*i*) *Ex parte Rawlings*, 22 Q. B. D. 193 ; *In re Isaacson* [1895], 1 Q. B. 333.

(*k*) *Ex parte Singleton*, 6 Morr. B. C. 250 ; 61 L. T. 301

"Stock or produce" within the exception appears to mean produce already severed from the land and which might be in fact delivered, although by the covenant or custom it ought not to be removed from the farm.(*l*) **Stock or produce.**

After-acquired Property.—As regards absolute bills of sale, after-acquired chattels brought on to the premises whether in substitution for or in addition to those which are there at the time of making the bill of sale may be passed by the same bill of sale, provided they are sufficiently described, though it is not necessary to enumerate them in a schedule, but the grantee's interest in such after-acquired chattels is, unless and until he has taken possession of them, an equitable interest only and his right to them will be postponed to the legal interest acquired by a person who takes by a pledge or a registered bill of sale without notice of the prior equitable interest.(*m*) Bills of sale by way of security, however, are by the amendment Act void, except as against the grantor, in respect of any personal chattels not specifically described in a schedule to the bill, or of any chattels of which the grantor was not the true owner at the time of the execution of the bill of sale.(*n*) This Act, however, excepts(*o*) from these provisions :—(1.) growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed ; (2.) fixtures separately assigned or charged, and plant or trade machinery in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale. And it has been held that a covenant to replace any articles damaged or worn out with others of equal value, to be included in the security, was a covenant for "the maintenance of the security," and, therefore, not to render the bill of sale void.(*p*)

(*l*) *Brantom* v. *Griffits*, 1 C. P. D. 355, 357, and see 56 Geo. 3, c. 50, s. 11, and *Lybbe* v. *Hart*, 29 Ch. D. 8.

(*m*) *Joseph* v. *Lyons*, 15 Q. B. D. 280 ; *Hallas* v. *Robinson*, *ibid.* 288.

(*n*) 41 & 42 Vict. c. 31, ss. 4, 5 ; *In re Sarl* [1892], 2 Q. B. 591.

(*o*) *Ibid.* section. 6.

(*p*) *Seed* v. *Bradley* [1894], 1 Q. B. 319, distinguishing *Thomas* v. *Kelly*, 13 App. Cas. 506.

Attornment and Powers of Distress.—By section 6 of the principal Act any attornment or agreement giving a power of distress and reserving a rent for the purpose of securing the payment of interest on advances is to be deemed a bill of sale of any personal chattels liable to be seized under such power of distress. This section is intended to strike at all secret arrangements by which under colour of a pretended tenancy a mortgagee is seeking to obtain further security for the interest on his advances.(*a*) It is provided, however, that the section is not to apply to a *boná fide* demise at a fair and reasonable rent(*b*) by a mortgagee who has actually taken possession.(*c*)

Seizure.—The grantee of goods under an absolute bill of sale can seize them according to the terms of the assignment. With regard to bills of sale given by way of security, section 7 of the amendment Act provides that the grantee may not take possession of the chattels assigned, except for the following causes:—

1. Default in payment of the sum or sums secured by the bill of sale at the time provided, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security.

2. The bankruptcy of the grantor or distress upon the goods for rent, rates, or taxes. This power, however, to seize in the event of bankruptcy is, in the case of bills of sale of trade goods given by a trader, subject to the reputed ownership clause of the Bankruptcy Act, 1883.(*d*)

3. Fraudulent removal of the goods by the grantor.

4. Failure by the grantor, without reasonable excuse, upon demand in writing by the grantee, to produce his last receipt for rent, rates, and taxes.

5. Execution levied against the goods of the grantor under any judgment at law.

(*a*) *In re Willis*, 21 Q. B. D. 384; *Green* v. *Marsh* [1892], 2 Q. B. 330.

(*b*) *In re Stockton Iron Furnace Company*, 10 Ch. D. 335; *Ex parte Jackson*, 14 Ch. D. 725.

(*c*) *In re Willis*, *supra*.

(*d*) As to which, see *post*, p. 587.

A power to seize may be inserted in the deed, provided it is not for causes other than those mentioned,(*e*) but it is not necessary.

Removal.—Section 13 of the amendment Act requires that the chattels seized under such bill of sale, whether registered before or after the commencement of the Act, shall not be removed or sold until after the expiration of five clear days from the date of seizure. 45 & 46 Vict. c. 43.

It is further provided by section 7 that the grantor may, within five days from the seizure on account of any of the above causes, apply to the Court or a judge in chambers, who, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the goods, or make such other order as may seem just. The provisions of this section are for the benefit of grantors only, who may assent to the removal of the goods by the grantee before the expiration of the five days for the purpose of avoiding a distress.(*f*)

The Formalities.—The Acts of 1878(*g*) and 1882(*h*) prescribe the formalities necessary to the validity of bills of sale. Thus, all bills of sale are required to be attested, registered, and to have the consideration for which they are given truly set forth; and with regard to bills of sale given by way of security, it is further provided that they must be in accordance with the form given in the schedule to the amendment Act, and that they must, subject to certain exceptions, have a schedule annexed containing an inventory of the chattels assigned. Non-compliance with these requirements will have the effect of rendering the bill of sale void in the manner and to the extent to be stated presently.(*i*)

(*e*) *Ex parte Stanford*, 17 Q. B. D. 273; *Ex parte Official Receiver*; *In re Morritt*, 18 Q. B. D. 222; *Watkins* v. *Evans*, *ibid.* 386.

(*f*) *Tomlinson* v. *Consolidated Credit Corporation*, 24 Q. B. D. 135.

(*g*) 41 & 42 Vict. c. 31, ss. 8, 10.

(*h*) 45 & 46 Vict. c. 43, ss. 4, 6, 8—10.

(*i*) *Post*, p. 584.

(1.) Attestation—(*a*) as to absolute bills of sale.

An absolute bill of sale must be attested by a solicitor, and the attestation must state that before the execution of the bill of sale he has explained to the grantor the effect thereof.(*a*) It is sufficient if he states that he has explained the bill of sale without having done so in fact,(*b*) though, *semble*, in such case he would render himself liable to civil and penal consequences.(*b*)

(*b*) as to bills of sale given by way of security.

The execution of bills of sale given by way of security must be attested by one or more credible witness or witnesses, not being a party or parties thereto, whose address and description must appear in the attestation clause, as shown in the schedule to the Act.(*c*)

The attestation may be proved by the attesting solicitor or witness, or by an office copy under section 16 of the principal Act.

Who may be attesting witness.

A grantee under a bill of sale, though a solicitor, cannot himself be the attesting witness to such bill of sale ;(*d*) but the grantee's solicitor(*e*) or his clerk,(*f*) and also a solicitor acting for both parties,(*g*) may.

It has been held that the manager of a firm who conducted the negotiations for a bill of sale, of which the firm was the grantee, was not "himself a party thereto," and might be an attesting witness.(*h*)

Directors of a company signing as directors a bill of sale executed under the seal of the company are not attesting witnesses within the Bills of Sale Acts.(*i*)

(2.) Registration.

Section 10, sub-section (2) of the principal Act, and section 8 of the amendment Act, provide the mode of

(*a*) 41 & 42 Vict. c. 31, s. 10 (1). The repeal of this sub-section by section 10 of the amendment Act is confined in its operation to bills given by way of security. *Casson* v. *Churchley*, 53 L. J. Q. B. 335; *Swift* v. *Pannell*, 24 Ch. D. 210; *Heseltine* v. *Simmons* [1892], 2 Q. B. 552.

(*b*) *Ex parte National Mercantile Bank; In re Haynes*, 15 Ch. D. 42.

(*c*) 41 & 42 Vict. c. 31, s. 10; 45 & 46 Vict. c. 43, s. 9; *Parsons* v. *Brand*, 25 Q. B. D. 110; *Bird* v. *Davey* [1891], 1 Q. B. 29; *Simmons* v. *Woodward* [1892], A. C. 100.

(*d*) *Seal* v. *Claridge*, 7 Q. B. D. 516.

(*e*) *Penwarden* v. *Roberts*, 9 Q. B. D. 137.

(*f*) *Hill* v. *Kirkwood*, W. N. (1880), 23; 28 W. R. 358.

(*g*) *Vernon* v. *Cooke*, 49 L. J. C. P. 767.

(*h*) *Peace* v. *Brookes* [1895], 2 Q. B. 451.

(*i*) *Shears* v. *Jacob*, L. R. 1 C. P. 513; *Deffell* v. *White*, L. R. 2 C. P. 144.

registration for all bills of sale, whether absolute or given by way of security.

The original bill, with the schedule or inventory (if any), and also a true copy(*k*) thereof, and of the attestation, together with an affidavit(*l*) of the time of the making of the bill of sale and of its due execution and attestation, and a description of the residence and occupation of the grantor and of every attesting witness, must be presented to the registrar,(*m*) and the copy bill of sale and the affidavit filed. This must be done within seven(*n*) clear days after the execution of the bill of sale, and if executed out of England within seven clear days after the time it would in the ordinary course of post arrive in England if posted immediately after execution. The affidavit of execution of the bill of sale must not be sworn before the grantee's solicitor, or the bill of sale will be void.(*o*)

Except as to questions of priority between holders of several bills of sale, registration is not necessary to the validity of a bill of sale while the seven days are running ;(*p*) but if it be not registered before the expiration of that time it cannot afterwards be effectually registered unless the time be extended under section 14 of the principal Act.

The filing of the copy bill of sale and the affidavit must take place at the same time.(*q*) The original should be

(*k*) *In re Hewer*, 21 Ch. D. 871 ; *Sharp* v. *McHenry*, 38 Ch. D. 448.

(*l*) For instances of sufficient and insufficient affidavits, see *Ex parte Carter*, *In re Threappleton*, 12 Ch. D. 908 ; *Sharpe* v. *Birch*, 8 Q. B. D. 111.

(*m*) By section 13 of the principal Act and Order LXI., rule 25 of the Rules of the Supreme Court, 1883, the Masters of the Queen's Bench Division of the High Court are the registrar. By section 11 of the amendment Act, it is provided that the registrar shall, in cases where the grantor resides, or the goods are described as being outside the London bankruptcy district, transmit to the county court registrar of the district where the grantor resides or the goods are, an abstract of the contents of such bill of sale It would seem that this applies only in the case of bills of sale given by way of security.

(*n*) When the time expires on a day when the registrar's office is closed, on the next practicable day. See 41 & 42 Vict. c. 31, s. 22, *post*, Appendix.

(*o*) *Baker* v. *Ambrose* [1896], 2 Q. B. 373 ; R. S. C. Order 38, r. 16.

(*p*) *In re Hewer*, 21 Ch. D. 871 ; 51 L. J. Ch. 904.

(*q*) See section 10 (2), and *Grindell* v. *Brendon*, 6 C. B. (N.S.) 698 ; 28 L. J. C. P. 333.

duly stamped when presented to the officer (Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 41). It may, however, be stamped afterwards on payment of the duty and penalty under section 15 of that Act.

Description of residence and occupation.

The requirement of a description of the residence and occupation of the grantor and every attesting witness is a re-enactment of the previous law.(a) A bill of sale given by way of security must further comply with the form given in the schedule to the amendment Act, which requires the address of the grantor to appear in the body of the bill, and the name, address, and description of the attesting witness to be set forth in the attestation clause. The extent of particularity required in the statement of residence is "a reasonably sufficient description of a residence which would guide the inquiries of a person who may be interested in knowing whether the individual whom he proposes to trust has made any disposition of property by way of a bill of sale,"(b) and the object of the description of the occupation is to give the assignee and creditor a true idea of the position of the assignor,(c) and a true indication of his vocation in life by which he can well be identified.(d) Misdescription or absence of true description in regard to the occupation is material.(c) It is not sufficient that the bill of sale contains the required descriptions; the affidavit must also contain them,(e) and the description of every attesting witness is necessary if there are more than one.(f) If, however, the affidavit sufficiently refers to the description in the bill of sale or copy to which it is annexed, and of which it forms part,(g) to incorporate it by reference, an incomplete description or even omission

(a) See 17 & 18 Vict. c. 36.

(b) *Jones* v. *Harris*, L. R. 7 Q. B. 157; *Briggs* v. *Boss*, L. R. 3 Q. B. 268; *Thorp* v. *Browne*, L. R. 2 H. L. 220; *Blount* v. *Harris*, 4 Q. B. D. 603.

(c) *Allen* v. *Thompson*, 1 H. & N. 15; *Sims* v. *Trollope and Sons*, W. N. [1896], 160.

(d) *Sharp* v. *McHenry*, 38 Ch. D. 449.

(e) *Hatton* v. *English*, 7 E. & B. 94; 26 L. J. Q. R. 161; *Pickard* v. *Bretz*, 5 H. & N. 9; 29 L. J. Ex. 18; *Brodrick* v. *Scale*, L. R. 6 C. P. 98.

(f) *Nicholson* v. *Cooper*, 27 L. J. Ex. 393; *Picard* v. *Marriage*, 1 Ex. D. 364.

(g) *Banbury* v. *White*, 2 H. & C. 300; 32 L. J. Ex. 258.

of description in such affidavit may be thus supplemented.(*h*) A contradictory description, however, or mis-statement cannot be thus corrected by reference.(*i*)

The description in the affidavit of the residence and occupation of the grantor must be that which is true at the time of swearing the affidavit, not of giving the bill of sale.(*k*) But the statement of the residence of the grantor at the time of executing the bill of sale was held sufficient in a case where between that date and the date of the affidavit he had left his residence and gone to America.(*l*) A statement in the affidavit that the grantor "was until lately" a commercial traveller was held insufficient, as being vague and misleading.(*m*)

It is a sufficient description of the residence of the grantor or attesting witness to state his place of business or if he be a clerk, that of his employer.(*n*) An erroneous addition appended to a description itself sufficient will not vitiate it.(*o*) Thus, "New Street, Blackfriars, in the county of Middlesex," and "Acton, in the city of London," were held good, a sufficiently certain description remaining after rejection of the erroneous additions.(*o*) It seems to be sufficient to state the grantor's principal place of business, being his residence, although he also carries on his business at other places.(*p*) A company has been held properly described as residing at its principal office,(*q*)

(*h*) *Routh* v. *Roublot*, 1 E. & E. 850: 28 L. J. Q. B. 240; *Jones* v. *Harris*, L. R. 7 Q. B. 157; *Ex parte Mackenzie*, 42 L. J. Bank. 25.

(*i*) *Murray* v. *Mackenzie*, L. R. 10 C. P. 625.

(*k*) *Button* v. *O'Neill*, 4 C. P. D. 354, disapproving of *The London and Westminster Loan, &c., Company* v. *Chase*, 12 C. B. (N.S.) 730; 31 L. J. C. P. 314.

(*l*) *In re Hewer*, 21 Ch. D. 871.

(*m*) *Castle* v. *Downton*, 5 C. P. D. 56.

(*n*) *Grant* v. *Shaw*, L. R. 7 Q. B. 700; *Attenborough* v. *Thompson*, 2 H. & N. 559; 27 L. J. Ex. 23; *Blackwell* v. *England*, 8 E. & B. 541; 27 L. J. Q. B. 124.

(*o*) *Hewer* v. *Cox*, 30 L. J. Q. B. 73; *Blount* v. *Harris*, 4 Q. B. D. 603.

(*p*) *Greenham* v. *Child*, 24 Q. B. D. 29.

(*q*) *Shears* v. *Jacob*, L. R. 1 C. P. 513. For other decisions upon the sufficiency of the description of residence, see *Briggs* v. *Boss*, L. R. 3 Q. B. 268; *Re Hams*, 10 Ir. Ch. Rep. 100; 1 L. T. (N.S.) 467; *Ex parte McHattie*, 10 Ch. D. 398; 48 L. J. Bank. 26; *Cooper* v. *Ibberson*, 14

The address of the grantor of a bill of sale given by way of security appearing in the body of the bill need not be his actual place of residence nor his place of business. The address of his club where letters will reach him is sufficient.(*a*)

"Occupation" means the trade or calling by which a man ordinarily seeks to gain his livelihood, or the business in which a man is usually engaged to the knowledge of his neighbours.(*b*) Casual or temporary occupation need not be stated, but only the fixed business or avocation by which a man gains his living.(*c*) Where the description is *primâ facie* sufficient, the onus lies on those who say it is not to show that the person is not what he is described.(*d*) Apparent absence of occupation will not, if there be in fact occupation, justify non-description of it,(*e*) but if no occupation is stated, the onus of proving occupation is on those who impugn the validity of the bill of sale.(*f*)

"Gentleman" has been held to sufficiently describe a person who had formerly been a coal agent, but at the time of the bill of sale was out of employment,(*g*) and a medical student who had only occasionally acted as a surgeon's assistant,(*h*) but not to be a sufficient description of a solicitor's clerk,(*i*) though formerly practising as an attorney,(*k*) nor where he was retained to make out the accounts, and send out the bills of a dissolved firm to which

L. T. (N.S.) 309; *Ex parte Wolfe*, 44 L. T. (N.S.) 321; *Simmons* v. *Woodward* [1892], A. C. 100.

(*a*) *Dolcini* v. *Dolcini* [1895], 1 Q. B. 898.

(*b*) *Ex parte National Mercantile Bank*; *In re Haynes*, 15 Ch. D. 42; *Tuton* v. *Sanoner*, 3 H. & N. 283; 27 L. J. Ex. 293.

(*c*) *Sutton* v. *Bath*, 3 H. & N. 382; 27 L. J. Ex. 388; *Ex parte National Mercantile Bank; In re Haynes*, 15 Ch. D. 50.

(*d*) *Grant* v. *Shaw*, L. R. 7 Q. B. 700.

(*e*) *Adams* v. *Graham*, 33 L. J. Q. B. 71; but see *Feast* v. *Robinson*, W. N. [1894], 14.

(*f*) *Smith* v. *Cheese*, 1 Ch. D. 60; and *Sutton* v. *Bath*, *supra*. But see a doubt expressed on this point in *Castle* v. *Downton*, 5 C. P. D. at p. 57.

(*g*) *Morewood* v. *South Yorkshire Railway, &c., Company*, 3 H. & N. 798; 28 L. J. Ex. 114.

(*h*) *Sutton* v. *Bath*, *supra*.

(*i*) *Dryden* v. *Hope*, 9 W. R. 18; *Brodrick* v. *Scale*, L. R. 6 C. P. 98.

(*k*) *Tuton* v. *Sanoner*, *supra*.

he had been clerk,(*l*) nor of a clerk in the audit office, though in respect of the furniture at his private house.(*m*)

An attesting witness's description of himself as deponent is a sufficient affidavit of his description.(*n*) An affidavit describing the grantor's residence and occupation to the best of the belief of the deponent was held sufficient.(*o*)

Defeasance, Condition, etc.—If a bill of sale is given subject to a defeasance, condition, or declaration of trust not inserted in the body of the bill, such defeasance, condition or declaration of trust must be written on the same deed as the bill itself, and before registration, and must be also set forth in the copy.(*p*)

A defeasance is a condition contained in a collateral document. The words of the sub-section apply to any condition, whether in favour of or prejudicial to the grantor or grantee, the absence of which from the bill of sale makes it not express the true contract between the parties, nor the real terms on which the chattels are to be redeemable.(*q*) Where a husband and wife assigned by bill of sale chattels in their dwelling-house to secure the payment of 300*l.*, with simple interest payable by instalments, and by a contemporaneous deed, not registered with the bill of sale, the wife mortgaged her reversionary interest under a will to secure the payment of a like sum with compound interest, payable by instalments on the same days, both documents being securities for the same debt and part of the same transaction, it was held that the agreement in the mortgage to pay compound interest was a condition which ought to have appeared on the face of the bill of sale, which was, therefore, void.(*r*) And where the grantor gave a bill of sale to secure the repayment of

(*l*) *Beales* v. *Tennant*, 29 L. J. Q. B. 188.
(*m*) *Allen* v. *Thompson*, 1 H. & N. 15; 25 L. J. Ex. 249.
(*n*) *Sladden* v. *Serjeant*, 1 F. & F. 323; *Wilcoxon* v. *Searby*, 29 L. J. Ex. 154.
(*o*) *Roe* v. *Bradshaw*, L. R. 1 Ex. 106.
(*p*) 41 & 42 Vict. c. 31, s. 10 (3), *post*, Appendix.
(*q*) *Edwards* v. *Marcus* [1894], 1 Q. B. 587.
(*r*) *Ibid.*

80*l*. with interest by equal monthly instalments, payable on specified days until the whole sum and interest should be fully paid, and at the same time gave a promissory note by which the same sum and interest was made payable in the same instalments, and on the same days; but the note contained a stipulation that, on non-payment of any instalment the whole sum remaining should become due and payable, it was held that this stipulation made the promissory note a defeasance or condition of the bill of sale within the meaning of the Act, and, therefore, the bill of sale was void.(*a*) But a deposit by the grantor of a policy of assurance on his life with the grantee as a collateral security is not a "defeasance or condition" within the sub-section.(*b*) Nor is an agreement as to the application of the consideration money a declaration of trust. Thus, where a debtor being indebted to the grantee in a sum of 235*l*. partly secured by an existing bill of sale, received 290*l*. as the consideration for a new bill of sale, being the sum already owing and a fresh advance, an agreement that out of the sum so advanced he would pay off the existing debt, though not mentioned in the bill of sale, did not constitute an undisclosed trust.(*c*) And it has been held, under the similar section of the Act of 1854, that it is not necessary to disclose on the face of the bill of sale, the fact that the person appearing as the grantee is only the trustee for the person who really lent the money; such a trust not being a provision which affects the contract as between the grantor and the grantee.(*d*)

Priority.—Provision is made in section 10 of the principal Act that where two or more bills of sale are given in respect of the same chattels they shall have priority by the date of their *registration*.(*e*) This applies not only as between registered but as between registered and unregistered bills of

(*a*) *Counsell* v. *The London and Westminster Loan, &c., Company*, 19 Q. B. D. 512; *Linfoot* v. *Pockett* [1895], 2 Ch. 835.
(*b*) *Carpenter* v. *Deen*, 23 Q. B. D. 566.
(*c*) *Thomas* v. *Searles* [1891], 2 Q. B. 408.
(*d*) *Robinson* v. *Collingwood*, 17 C. B. (N.S.) 777; 34 L. J. C. P. 18.
(*e*) 41 & 42 Vict. c. 31, s. 10. See *post*, Appendix.

sale.(*f*) And possession taken by the grantee of a prior unregistered bill of sale, after the date of registration of a subsequent bill of sale over the same goods, will not avail him.(*g*) As between grantees, therefore, registration is necessary even within the seven days' limit, with this exception that if the second bill of sale is given by way of security, section 5 of the amendment Act applies, and the grantor must be the true owner of the goods at the time. Thus, where an absolute bill of sale, unregistered, was followed by a subsequent bill of sale over the same goods, given by way of security, it was held that the grantor, having parted with all his property and interest under the first bill of sale, was not the true owner of the goods at the time he executed the second bill of sale; which was, therefore, although registered, void as against the grantee of the first bill.(*h*) And inasmuch as the effect of section 8 of the Act of 1878 in avoiding an unregistered bill of sale as against an execution creditor is not to entirely displace it, but only to the extent necessary to satisfy the execution,(*i*) it follows that when a prior absolute bill of sale, unregistered, is avoided by an execution as to a portion only of the goods, it is still valid in respect of the remainder not required to satisfy the execution, as against a subsequent bill of sale by way of security though registered. But this does not apply where both bills of sale are by way of security; for, in that case, the grantor has an equity of redemption and is still the true owner of the chattels.(*k*) Under the Act of 1854, however, the operation of which is preserved as to bills of sale executed before 1st January, 1879, the priorities as between grantees of bills of sale in

17 & 18 Vict. c. 36.

(*f*) *Conelly* v. *Steer*, 7 Q. B. D. 620; *Lyons* v. *Tucker*, *ibid.* 523.

(*g*) *Lyons* v. *Tucker*, *supra*. It would appear from the judgments of the Court of Appeal in this case, and in *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471, that the same result follows where possession has been taken under the first bill before the execution of the second. But this was not necessary to, nor the ground of, the decision in these cases, and it is submitted is not the true view of the Act.

(*h*) *Tuck* v *Southern Counties Deposit Bank*, *supra*.

(*i*) *Ex parte Blaiberg*, 23 Ch. D. 254.

(*k*) *Thomas* v. *Searles* [1891], 2 Q. B. 408.

respect of the same goods were determined by the date of their *execution*, for the Act contained no priority clause, and registration was necessary only as against the persons specified.(*a*) A bill of sale, therefore, within that Act though unregistered gave a valid title as against a subsequent registered bill of sale, but this rule was affected by the event of the grantor's bankruptcy, or of execution upon his goods, in which cases the unregistered bill would be entirely displaced (except as regards any goods the holder might have seized under it before the bankruptcy or execution), and the later registered bill would be good against the trustee or execution creditor, and thus obtain a priority which, but for such bankruptcy or execution, it would not have had.(*b*)

Transfer, &c., of Registered Bill of Sale.—A transfer or assignment of a registered bill of sale need not be registered. Thus where, by a deed, between the two parties to a bill of sale (part of the sum secured by which had been paid off) and the plaintiff, the security was transferred and the goods assigned to him on his paying off the amount remaining due on the bill, and making a further advance to the grantor; it was held by the Court of Appeal that, whether or not the deed was an effectual security, without registration, for the fresh advance, it was, as to the amount which remained due on the former bill of sale, a transfer and valid to that extent without registration under section 10 of the Bills of Sale Act, 1878, so as to entitle the plaintiff to the goods.(*c*) If, on a transfer, a fresh advance be made beyond the amount originally advanced, the instrument must, as to the amount of such additional advance, be stamped as an original mortgage,(*d*)

(*a*) *Ex parte Allen*, L. R. 11 Eq. 211; *Hills* v. *Shepherd*, 1 F. & F. 191; *Barker* v. *Aston*, *ibid.* 192.

(*b*) *Edwards* v. *English*, 7 E. & B. 564; 26 L. J. Q. B. 193; *Richards* v. *James*, L. R. 2 Q. B. 285; *In re Barrand*, 3 Ch. D. 324; 4 Ch. D. 23.

(*c*) *Horne* v. *Hughes*, 6 Q. B. D. 676.

(*d*) *Wale* v. *Commissioners of Inland Revenue*, 4 Ex. D. 270; 41 L. T. 166.

and, consequently, it would seem be registered as a new bill of sale to the same extent.

Renewal of registration.

Section 11 of the principal Act provides for the renewal of registration every five years. Assignees of bills of sale are in the same position as their assignors. If a bill of sale is assigned before registration it must be registered by the assignee to make it good,—if after registration, the assignee must renew the registration in due course to keep it good.(*e*) But a renewal of registration is not necessary by reason only of a transfer, or assignment. The provisions of this Act as to renewal of registration are retrospective.(*f*)

Local registration of contents.

Section 11 of the amendment Act provides for the local registration of the contents of registered bills of sale in cases where the grantor resides, or the chattels are situated, outside the London bankruptcy district. An abstract of the contents of every such bill of sale will be transmitted to the county court registrar of the district, and by him filed and indexed.(*g*) Power to search the registers and to inspect, examine, and take copies of the bills of sale therein are given in sections 16 of the principal Act and 16 of the amendment Act, and like powers as to the local registers in section 11 of the amendment Act.

Inspection of registered bills of sale and taking copies.

Rectification of register and extension of time.

Section 14 of the principal Act empowers a judge of the High Court to order rectification of the register under the circumstances therein specified, and to extend the time for registration in that behalf.(*h*) The power of rectification given in this section is limited to the description of the register in section 12 of the Act.(*i*) The time cannot be extended so as to defeat the vested right of an execution creditor, or trustee in bankrupty.(*k*)

The Consideration.—Great care must be taken in accurately complying with the requirement that the con-

(*e*) *Karet* v. *Kosher Meat Supply Association*, 2 Q. B. D. 361.
(*f*) 41 & 42 Vict. c. 31, s. 23.
(*g*) See Rules of Supreme Court—Bills of Sale Acts, 1878 and 1882, dated 28th December, 1883.
(*h*) *Post*, Appendix.
(*i*) *Crew* v. *Cummings*, 21 Q. B. D. 420.
(*k*) *Ibid.*, and *In re Parsons* [1893], 2 Q. B. 122.

sideration must be set forth.(a) It must be set forth in the body of the deed; if not truly stated there, a correct statement contained in a receipt at the foot of the deed will not satisfy the statute, such receipt not being part of the deed.(b) The consideration required to be stated is that which the grantor receives for giving the bill of sale, not necessarily the amount to be secured by the deed.(c) The real consideration must be honestly set forth. It is sufficient, however, if it is stated with substantial accuracy, that is, if the true legal, mercantile, or business effect of what actually took place is stated. Strict literal accuracy of statement is not necessary.(d) Thus, if part of the consideration stated in a bill of sale is, by the grantor's direction given at the time of the execution of the deed, applied in satisfaction of a then existing debt owing by him, the money so paid may be properly stated in the deed to be then paid to him.(e) The amount of the expenses incident to the preparation of the bill of sale, is not such a "then existing debt owing by the grantor," and the deduction of it from the amount stated to be advanced will invalidate the bill of sale; (f) so also will deductions by way of future interest, (g) bonus, or commission.(h) It is not necessary that a collateral agreement between the grantor and grantee as to the application of the consideration money should be set forth, (i) and it is quite competent to the grantor to direct what shall be paid to himself, and

(a) 41 & 42 Vict. c. 31, s. 8; 45 & 46 Vict. c. 43, s. 8.

(b) *Ex parte Charing Cross Advance and Deposit Bank*, 16 Ch. D. 35.

(c) *Ex parte Challinor*, 16 Ch. D. 260.

(d) *Ex parte Challinor*, *supra*; *Credit Company* v. *Pott*, 6 Q. B. D. 295; *Roberts* v. *Roberts*, 13 Q. B. D. 794; *Ex parte Johnson*, 26 Ch. D. 344; *Richardson* v. *Harris*, 22 Q. B. D. 268.

(e) *Ex parte Firth*, 19 Ch. D. 419; *Ex parte Bolland*, *Re Roper*, 21 Ch. D. 543.

(f) *Ex parte Firth*, *supra*, overruling *Ex parte National Mercantile Bank; In re Haynes*, 15 Ch. D. 42, and *Ex parte Challinor*, *supra*, so far as they decided that the expenses incidental to the deed might be deducted from the amount stated to be advanced; and see *Ex parte Rolph*, 19 Ch. D. 98.

(g) *Ex parte Charing Cross Advance and Deposit Bank*, *supra*.

(h) *Hamilton* v. *Chaine*, 7 Q. B. D. 1, 319.

(i) *Ex parte National Mercantile Bank. In re Haynes*, *supra*; *Ex parte, Rolph*, *supra*; *Thomas* v. *Searles* [1891], 2 Q. B. 408.

what shall be paid to others on his behalf.(k) Where the consideration was stated to be 7,350*l.* now paid, though in fact no money passed, but during several years there had been several loans and advances to the grantor by the grantee, and upon a statement of account between them this sum was found to be the balance due, which sum with interest the grantor by the bill of sale promised to pay to the grantee on demand, by notice in writing ;—it was held, that the consideration was stated with substantial accuracy, the legal, mercantile, and business effect of the transaction being given, viz., that the giving of the deed wiped out the old debt, and constituted the balance thus found due a new debt payable only after demand in writing—thus giving a new credit.(l)

Further Formalities in Bills of Sale given by Way of Security.—In addition to the above requirements, the amendment Act has provided further with regard to bills of sale given by way of security—(1) that they must be in accordance with the form given in the schedule to that Act ;(m) (2) that they must have a schedule of the chattels assigned.(n)

Every bill of sale by way of security, except the instruments mentioned in section 6 of the principal Act, to which documents section 9 of the amendment Act has been held not to apply,(o) must be in a form substantially like the statutory form ; nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it.(p) If a document produces the precise legal effect of the statutory form, a deviation from that form which is not calculated to mislead will not invalidate it.(q) But the omission of any of the particulars which the form requires to be inserted, such as the witnesses' address and description, the rate of interest, and the time of payment,

(1.) Statutory form 45 & 46 Vict. c. 43, s. 9.

(k) *Hamlyn* v. *Betteley*, 5 C. P. D. 327.
(l) *Credit Company* v. *Pott*, 6 Q. B. D. 295.
(m) 45 & 46 Vict. c. 43, s. 9. (n) *Ibid.*, s. 4.
(o) *Green* v. *Marsh* [1892], 2 Q. B. 330.
(p) *Davis* v. *Barton*, 11 Q. B. D. 537, 540.
(q) *Ex parte Stanford*, 17 Q. B. D. 259.

will render the deed void.(*a*) If the transaction cannot be expressed in a document in accordance with the form, it cannot be effected by any document,(*b*) the Act having practically prohibited bills of sale of personal chattels as security for money to which the statutory form is not appropriate.(*c*) Therefore, any of the documents mentioned in section 4 of the principal Act which cannot be brought into accordance with the statutory form cannot be employed as securities for money.

The debt and interest may be made payable in one sum,(*d*) or by instalments.(*e*) It must not be made payable on demand, but a fixed time for payment must be inserted.(*f*) Terms for the maintenance or defeasance of the security may be inserted, but great care must be taken that these terms are proper to that purpose,(*g*) and that in giving a power to seize upon breach of the conditions inserted the bill of sale does not provide for seizure for any other cause than those specified in section 7 of the amendment Act.(*h*) It has been held that a collateral agreement between the grantor and the grantee that the bill of sale shall not be made available until the grantee has exhausted other securities for the advance is not a term for the defeasance of the security, and that the non-insertion of such an agreement does not render the bill of sale void under this section.(*i*)

(2) The schedule.

Every bill of sale by way of security must have annexed to, or written on it, a schedule containing an inventory of the chattels assigned.(*k*) The Act, however,

(*a*) *Parsons* v. *Brand*, 25 Q. B. D. 110; *Thomas* v. *Kelly*, 13 App. Cas. 506; *Weardale Coal Company* v. *Hodson* [1894], 1 Q. B. 598.

(*b*) *Ex parte Parsons*, 16 Q. B. D. 532.

(*c*) *Thomas* v. *Kelly*, 13 App. Cas., at p. 511.

(*d*) *Watkins* v. *Evans*, 18 Q. B. D. 386.

(*e*) *Goldstrom* v. *Tallerman*, *ibid.* 1; *In re Bargen* [1894], 1 Q. B. 444.

(*f*) *Hetherington* v. *Groome*, 13 Q. B. D. 789; *Sibley* v. *Higgs*, 15 Q. B. D. 619; *Hughes* v. *Little*, 18 Q. B. D. 32.

(*g*) *Blaiberg* v. *Beckett*, 18 Q. B. D. 96; *Furber* v. *Cobb*, *ibid.* 494; *Seed* v. *Bradley* [1894], 1 Q. B. 319; *Linfoot* v. *Pockett* [1895], 2 Ch. 835; *Peace* v. *Brookes* [1895], 2 Q. B. 451.

(*h*) *Ex parte Stanford*, 17 Q. B. D. 273; *Real and Personal Advance Company* v. *Clears*, 20 Q. B. D. 304; *Topley* v. *Corsbie*, *ibid.* 350; *Cartwright* v. *Regan* [1895], 1 Q. B. 900.

(*i*) *Heseltine* v. *Simmons* [1892], 2 Q. B. 547.

(*k*) 45 & 46 Vict. c. 43, s. 4.

excepts from the obligation of this provision: (i.) growing crops separately assigned or charged if actually growing at the time the bill of sale was executed; (ii.) fixtures separately assigned or charged, and plant or trade machinery which have been substituted for any of the like fixtures, plant, or trade machinery which are specifically described in the schedule.(*l*) The description must be sufficient to enable the several chattels comprised in the schedule to be identified.(*m*) A description of chattels in terms general enough to include any like number of the particular class that might happen at any time to be on the premises would be insufficient,(*n*) but it may include chattels to replace damaged or worn-out articles.(*o*)

Avoidance.—The effect of non-compliance with the prescribed formalities is to avoid the bill of sale; but the extent of avoidance is not the same in the case of absolute bills of sale as in the case of bills of sale by way of security, nor in respect of each of the above-mentioned requirements.

(*a.*) As to absolute bills of sale, avoided as against certain persons.

If not attested or not registered, or if the consideration be not truly stated, an absolute bill of sale, or any bill of sale to which the amendment Act does not apply, will be void, not entirely, but as against a trustee in bankruptcy or liquidation, a trustee under an assignment for the benefit of creditors and an execution creditor, in respect of chattels comprised in the bill of sale which after the expiration of seven days from the making or giving the bill of sale are found in the possession or apparent possession of the grantor at the time of *filing the petition*,(*p*) or executing the assignment or levying the execution.(*q*) As between

(*l*) 45 & 46 Vict. c. 43, s. 6.

(*m*) *Witt* v. *Banner*, 20 Q. B. D. 114; *Carpenter* v. *Deen*, 23 Q. B. D. 566; *Hickley* v. *Greenwood*, 25 Q. B. D. 277; *Davidson* v. *Carlton Bank* [1893], 1 Q. B. 82.

(*n*) *Witt* v. *Banner*, *supra*; *Hickley* v. *Greenwood*, *supra*.

(*o*) *Seed* v. *Bradley* [1894], 1 Q. B. 319.

(*p*) Under the Act of 1854 it was as to goods in the apparent possession of the grantor *at the time of the bankruptcy*, and the title of the trustee had relation back to the commencement of the bankruptcy. *Ex parte Attwater*, 5 Ch. D. 27. The protecting sections of the Bankruptcy Act, 1883, ss. 48 (2), 49, have no operation as regards a transaction which is made void by the Bills of Sale Acts.

(*q*) 41 & 42 Vict. c. 31, s. 8.

grantor and grantee an absolute bill of sale is good, notwithstanding such non-compliance with the requirements.(*a*) As between holders of two or more absolute bills of sale over the same goods, a prior unregistered bill of sale, though good as against the grantor will be void as against a subsequent registered bill of sale ;(*b*) and it has been held to be immaterial whether the grantor under the registered or unregistered bill of sale is in possession of the goods.(*c*)

(*b*.) As to bills of sale given by way of security.

As regards a bill of sale by way of security—

(*a*.) If given in consideration for a sum under 30*l*. it will be void ;(*d*)

(*b*.) If not attested or registered under the Acts, or if the consideration be not truly set forth, it will be void, in respect of the personal chattels comprised in it;(*e*)

(*c*.) If it is not in accordance with the statutory form it will be void ;(*f*)

(*d*.) As regards any goods purported to be assigned which are not specifically described in the schedule, or of which the grantor was not the true owner(*g*) at the date of the execution of the bill, the bill of sale will be void *except* as against the grantor, and *except* as to growing crops and substituted plant and fixtures,(*h*) and articles to replace the like articles damaged or worn out ;(*i*)

(*e*.) If the bill of sale contains a power to seize for any other than the causes specified in section 7 of the amendment Act it will be void ;(*k*)

(*a*) *Davis* v. *Goodman*, 5 C. P. D. 128 ; 49 L. J. C. P. 344.
(*b*) 41 & 42 Vict. c. 31, s. 10.
(*c*) *Lyons* v. *Tucker*, 7 Q. B. D. 523 ; *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471 ; but see *ante*, p. 577, note (*g*).
(*d*) 45 & 46 Vict. c. 43, s. 12.
(*e*) *Ibid*. s. 8.
(*f*) As to compliance with the statutory form, see *ante*, p. 581.
(*g*) *In re Sarl* [1892], 2 Q. B. 591.
(*h*) 45 & 46 Vict. c. 43, ss. 4, 5.
(*i*) *Seed* v. *Bradley* [1894], 1 Q. B. 319.
(*k*) *Ibid*. s. 7. *Ex parte Stanford*, 17 Q. B. D. 273; *Topley* v. *Corsbie*, 20 Q. B. D. 350 ; *Cartwright* v. *Regan* [1895], 1 Q. B. 900.

(*f.*) Under the priority clause of the principal Act, which applies to all bills of sale, a prior bill of sale given by way of security will be void as against a bill of sale given subsequently but registered first.(*l*)

Apparent Possession.—Since the amendment Act, the question as to the goods being still in the apparent possession of the grantor only arises in the case of bills of sale to which the amendment Act does not apply.(*m*) Apparent possession is defined by section 4 of the principal Act(*n*) to be when the goods remain or are in or upon any premises *occupied* by the grantor or are *used* and *enjoyed by him* in *any place whatsoever*, notwithstanding that formal possession thereof may have been taken by or given to any other person. Thus where a person sold by a written agreement some timber on a private wharf and some timber on a public wharf, and by another written agreement some furniture in a house belonging to him, part of which he had previously used as an office, and occasionally slept in; and the vendee took possession of the key of the private wharf and sold some of the timber lying there, and took persons to the public wharf (the key of which remained in the hands of the wharfinger) to look at the timber with a view to sale, and occasionally used the rooms, the use of which the vendor had discontinued, and paid the servant's wages as stipulated; it was held that there was no possession or apparent possession of the timber either at the private or public wharf, nor of the furniture, within the principal Act, so as to render them liable to seizure under an execution against the vendor; BRAMWELL, B., saying, "Here a great deal more had been done to them than formal possession taken."(*o*)

It is "formal possession" only, for instance, where a broker is simply put in to prevent removal, and allows the debtor and his family to use the goods and everything to

Distinction between

(*l*) 41 & 42 Vict. c. 31, s. 10. See *ante*, p. 576, as to priorities.
(*m*) See sections 3 and 15 of the amendment Act.
(*n*) This definition is the same as that in the Act of 1854.
(*o*) *Gough* v. *Everard*, 2 H. & C. 1; 32 L. J. Ex. 210; and see *Smith* v. *Wall*, 18 L. T. (N.S.) 182.

formal and real possession.

go on as before.(*a*) But dealing with the goods as by packing them up for removal is among other things an assertion of actual possession,(*b*) and so where the grantee of a bill of sale takes possession of the goods comprised in it, and advertises them for sale as the goods of the grantor sold under a bill of sale, the goods, though still in the house of the grantor, are no longer in his apparent possession ;(*c*) but where, in a similar case, a sale was announced by placards, from which, however, it could not be inferred that the sale was made under a bill of sale, and not by the grantor himself, it was held there was nothing more than formal possession.(*d*) Possession by the sheriff under an execution, even though the grantee has taken no possession, takes the goods out of the apparent possession of the grantor.(*e*) Goods in the hands of a bailee for the grantor who still retains dominion over them, *e.g.*, plate at a banker's, or furniture at a warehouse, would seem to be in the apparent possession of the grantor,(*f*) but chattels pledged are not.(*g*) Where the vendor of the goodwill and stock of a business continued to live on the premises as servant or manager to the vendee who changed the name over the shop, issued circulars to the creditors and advertised the sale, it was held that the vendor did not remain in apparent possession of the stock.(*h*) On a sale by a husband to his wife of furniture in the house where they lived together, it was held that the goods did not remain in the apparent possession of the husband.(*i*)

(*a*) *Ex parte Jay, In re Blenkhorn*, L. R. 9 Ch. 697, at p. 704; *Ex parte Hooman*, L. R. 10 Eq. 63; *Ex parte Lewis*, L. R. 6 Ch. 626; *Seal* v. *Claridge*, 7 Q. B. D. 516.

(*b*) *Ex parte Jay, In re Blenkhorn, supra*, and see *Ex parte Mortlock*, W. N. (1881), p. 161.

(*c*) *Emanuel* v. *Bridger*, L. R. 9 Q. B. 286.

(*d*) *Ex parte Lewis, supra;* and see also *Pickard* v. *Marriage*, 1 Ex. D. 364, and *Ashton* v. *Blackshaw*, L. R. 9 Eq. 510.

(*e*) *Ex parte Saffery*, 16 Ch. D. 668; 44 L. T. 324.

(*f*) *Ancona* v. *Rogers*, 1 Ex. D. 364: 45 L. J. Ex. 594.

(*g*) *Lincoln Waggon Company* v. *Mumford*, 41 L. T. 655.

(*h*) *Gibbons* v. *Hickson*, 55 L. J. Q. B. 119.

(*i*) *Ramsay* v. *Margrett* [1894], 2 Q. B. 18.

There must be actual *de facto* occupation.

The "occupation" referred to in the definition of apparent possession is actual *de facto* occupation.(*k*) Thus, the grantor of a bill of sale, not registered, was tenant of rooms where the goods comprised in it were, but he resided elsewhere. Having made default, he gave the keys of the rooms to the grantee, who opened them and put his name on some of the goods. None, however, were removed:—Held, that the grantor did not "occupy" within the meaning of the Act, and that the bill of sale was valid as against the execution creditor.(*l*)

Demand of possession not possession by grantee.

When the grantor, after default in payment, and after demand of possession and threat by the grantee, remained in possession until the filing of a liquidation petition, it was held that the grantee's title to and demand of possession did not take the goods out of the possession of the grantor within the Act.(*m*) *Semble*, if, in the same circumstances, the goods were held for the grantor by a bailee, the grantor would still be in possession within the Act.(*n*)

Order and Disposition.—Under the Act of 1854, goods that were left in the apparent possession of a grantor of a bill of sale, but which were protected by the registration of the bill, were still liable to be claimed by the trustee in bankruptcy by the application of the order and disposition clause of the Bankruptcy Act, 1869.(*o*) By section 20 of the principal Act, chattels comprised in a duly registered bill of sale are exempted from the application of that clause. Section 15 of the amendment Act, however, has repealed section 20 of the principal Act, except as to absolute bills of sale, to which the later Act does not apply, and as to bills of sale given by way of security, if registered before November 1st, 1882. Absolute bills of sale are protected, even though

(*k*) *Robinson* v. *Briggs*, L. R. 6 Ex. 1.
(*l*) *Ibid.* But see *Ancona* v. *Rogers*, 1 Ex. D. 285.
(*m*) *Ancona* v. *Rogers*, *supra*.
(*n*) *Ibid.* p. 292.
(*o*) Now section 44 (iii.) of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52).

unregistered, if the seven days allowed for registration has not elapsed.(*a*)

Duplicate Bills of Sale.—By section 9 of the principal Act, subsequent bills of sale executed in renewal of prior unregistered bills within or on the expiration of seven days from their execution are rendered void, except so far as they may be *bonâ fide* given to correct mistake.(*b*) This has put an end to the practice which prevailed under the Act of 1854 of executing successive bills of sale each within twenty-one days from the execution of a prior bill, and so avoiding the necessity of registration.(*c*) It has been held, however, that this section does not apply to duplicate bills of sale executed *after* the expiration of the seven days therein mentioned.(*d*) Of course, in the event of bankruptcy, a duplicate or the last bill of sale of a series would be liable to be avoided, as being given for a past consideration,(*e*) unless there is a fresh consideration or a new arrangement.(*f*)

Rights not Affected by Bill of Sale.—By section 14 of the amendment Act, a bill of sale given by way of security does not protect the chattels included in it from distress for the recovery of taxes, and poor and other parochial rates;(*g*) but this section does not apply where proceedings for recovery of a rate have been taken in the County Court and execution levied under section 261 of the Public Health Act, 1875.(*h*)

Independently of the provisions of the Bills of Sale Acts the grantee of goods under a bill of sale is subject to certain risks affecting the value of his security.

(1.) Landlord's right of distress.

1. The landlord's right of distress is paramount.

(2.) Gran-

2. Where the goods which are the subject of the bill of sale are trade goods or things which a person in possession

(*a*) *In re Hewer*, 21 Ch. D. 871.
(*b*) 41 & 42 Vict. c. 31, s. 9.
(*c*) *Smale* v. *Burr*, L. R. 8 C. P. 64; *Ramsden* v. *Lupton*, L. R. 9 Q. B. 17; *Ex parte Harris, In re Pulling*, L. R. 8 Ch. 48.
(*d*) *Carrard* v. *Meek*, 43 L. T. 760.
(*e*) *Ex parte Cohen*, L. R. 7 Ch. 20; *Ex parte Stevens*, L. R. 20 Eq. 786; *Ex parte Furber*, 6 Ch. D. 181; *Ex parte Payne*, 11 Ch. D. 539.
(*f*) *Ex parte Harris, In re Pulling, supra.*
(*g*) 45 & 46 Vict. c. 43, s. 14.
(*h*) *Local Board of Wimbledon* v. *Underwood* [1892], 1 Q. B. 836.

may be presumed to have the right to dispose of in the ordinary course of business, if such goods are left in the possession of the grantor a sale by him in the ordinary course of his trade or business will give to a *bonâ fide* vendee, who has taken possession of them, a good title to them against the grantee under his bill of sale, although registered.(*i*) If the sale to and removal by the vendee be not in the ordinary course of business he will have no title against the bill of sale holder.(*k*)

tor left in possession of goods of trade.

(3.) The bankruptcy law.

Under the bankruptcy law a bill of sale, though complying with all the requisites of the Bills of Sale Acts, may sometimes be declared void as a fraud upon that law.

Thus, a conveyance of a person's whole(*l*) property to secure a past debt is an act of bankruptcy, and a bill of sale so given will be declared void against the trustee in bankruptcy.(*m*) Within the principle above mentioned, and therefore void against the trustee, is a bill of sale which is the last of a series of successive bills given in renewal or substitution.(*n*) A bill of sale, however, will not be void as given for a past debt if there be a substantial fresh advance made at the same time,(*o*) or made subsequently in pursuance of a *bonâ fide* promise,(*p*) nor if it is executed in pursuance of an agreement made at the time the consideration arose or the money was advanced.(*q*) But such

(*i*) *National Mercantile Bank* v. *Hampson*, 5 Q. B. D. 177; *Taylor* v. *M'Keand*, 5 C. P. D. 358; *Walker* v. *Clay*, 49 L. J. C. P. 560.

(*k*) *Payne* v. *Fern*, 6 Q. B. D. 620; *Taylor* v. *M'Keand*, *supra*.

(*l*) Book debts must be taken into consideration. *Ex parte Burton; In re Tunstall*, 13 Ch. D. 102; and see *Ex parte Hawker*, L. R. 7 Ch. 214.

(*m*) *Ex parte Hawker*, *supra*; *In re Wood*, L. R. 7 Ch. 302; *Ex parte Fisher*, *ibid.* 636; *In re Gibson*, 8 Ch. D. 230; *Ex parte Kilner*, 13 Ch. D. 245; *Ex parte Burton*, *ibid.* 102; *Crawcour* v. *Salter*, 18 Ch. D. 30. And see 46 & 47 Vict. c. 52, s. 4 (1) (*b*) (*c*). Independently of the bankruptcy law a past debt is a sufficient consideration. See cases cited.

(*n*) *Ante*, p. 588. And see *Ex parte Cohen*, L. R. 7 Ch. 20; *Ex parte Stevens*, L. R. 20 Eq. 786; *Ex parte Furber*, 6 Ch. D. 181; *Ex parte Payne*, 11 Ch. D. 539.

(*o*) *Hutton* v. *Cruttwell*, 1 E. & B. 15; 22 L. J. Q. B. 78; *Lomax* v. *Buxton*, L. R. 6 C. P. 107; *Ex parte Sheen*, *In re Winstanley*, 1 Ch. D. 560; *Ex parte King*, 2 Ch. D. 256.

(*p*) *Ex parte Dann*, 17 Ch. D. 26; *Ex parte Wilkinson*, 22 Ch. D. 788.

(*q*) *Ex parte Homan*, L. R. 12 Eq. 598; *Ex parte Fisher*, L. R. 7 Ch. 636; *In re Jackson*, 4 Ch. D. 682; *Ex parte Hauxwell*, 23 Ch. D. 626.

agreement to give the bill of sale must be absolute and peremptory;(a) if made upon a condition that the bill was not to be executed till the lender "lost confidence" in the borrower,(b) or if the execution of the bill of sale to be given in pursuance of it is purposely postponed until the trader is in a state of insolvency, in order to prevent the destruction of his credit, the agreement will not support such bill of sale against the trustee in bankruptcy.(c)

(4.) Conveyances within the Statute of Elizabeth.

A bill of sale if made with the fraudulent intention of defeating creditors will, even though for valuable consideration, be invalid under the statute 13 Eliz. c. 5,(d) and liable to be set aside by an execution creditor or the trustee in bankruptcy of the grantor.(e) But a bill of sale *bonâ fide* made for good consideration is not void merely because it is made with the intent to defeat the expected execution of a judgment creditor.(f)

(a) *Ex parte Fisher*, *supra*; *Ex parte Burton*, *In re Tunstall*, 13 Ch. D. 102; *Ex parte Kilner*, *ibid.* 245.

(b) *Ex parte Burton*, *In re Tunstall*, *supra*.

(c) *Ex parte Fisher*, *supra*; *Ex parte Kilner*, *supra*; *In re Gibson*, *supra*.

(d) See also 27 Eliz. c. 4; and 46 & 47 Vict. c. 52, s. 4 (1) (b).

(e) *Hale* v. *Metropolitan Saloon Omnibus Company*, 28 L. J. Ch. 777; *Reed* v. *Blades*, 5 Taunt. 212; *Latimer* v. *Batson*, 4 B. & C. 652.

(f) *Wood* v. *Dixie*, 7 Q. B. 892. See also "Hunt's Fraudulent Conveyancing" (2nd edit.), 1897.

AN APPENDIX

CONTAINING

THE PRINCIPAL STATUTES IN FORCE RELATING TO BANKERS, BANK NOTES, AND BANKING COMPANIES.

TITLES.

RELATING TO SCOTLAND EXCLUSIVELY.

RELATING TO IRELAND EXCLUSIVELY.

STATUTES.

BANK OF ENGLAND RESTRICTION ACT.

(39 & 40 GEO. 3, CAP. 28, s. 15.)

An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800.(*a*)

[28th March, 1800.]

No other bank shall be erected by Parliament during the continuance of the said privilege, nor shall any number of bankers in partnership exceeding six be allowed.

15. And to prevent any doubts that may arise concerning the privilege or power given, by former Acts of Parliament, to the said governor and company, of exclusive banking, and also in regard to the erecting any other bank or banks by Parliament, or restraining other persons from banking during the continuance of the said privilege, granted to the Governor and Company of the Bank of England as before recited, it is hereby further enacted and declared, that it is the true intent and meaning of this Act, that no other bank shall be erected, established, or allowed by Parliament; and that it shall not be lawful for any body politic or corporate whatsoever, erected or to be erected, or for any other persons, united or to be united in covenants or partnership, exceeding the number of six persons in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the said privilege to the said governor and company; who are hereby declared to be and remain a corporation, with the privilege of exclusive banking, as before recited, subject to redemption on the terms and conditions before mentioned; that is to say, on one year's notice to be given after the 1st day of August, 1833, and repayment of the said sum of 3,200,000*l.*, and all arrears of the said 100,000*l.* per annum; and also upon repayment of the said sum of 8,486,800*l.*, and the interest or annuities payable thereon or in respect thereof, and all the principal and interest money that shall be owing on all such tallies, Exchequer orders, Exchequer bills, parliamentary funds, or other Government securities, which the said governor and company, or their successors,

Conditions of redemption.

(*a*) By the Statute Law Revision Act, 1871 (34 & 35 Vict. c. 116), the whole of this Act, except from "the said Governor and Company of the Bank of England and their successors for ever," in section 13 to the end of the Act, is repealed. The above section (15) is, therefore, still in force.

shall have remaining in their hands, or be entitled to, at the time of such notice to be given as aforesaid, and not otherwise, anything in this Act or any former Act or Acts of Parliament to the contrary in anywise notwithstanding.

ISSUE OF BANK NOTES ON UNSTAMPED PAPER AND BANKERS' LICENSES.

(55 GEO. 3, CAP. 184.)

An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, &c. [11th July, 1815.]

Re-issuable notes not to be issued by bankers or others, without a license.

24. From and after the 10th day of October, 1815, it shall not be lawful for any banker or bankers, or other person or persons (except the Bank of England), to issue any promissory notes for money payable to the bearer on demand, hereby charged with a duty and allowed to be re-issued as aforesaid, without taking out a license yearly for that purpose; which license shall be granted by two or more of the said Commissioners of Stamps(a) for the time being, or by some person authorised in that behalf by the said Commissioners, or the major part of them, on payment of the duty charged thereon, in the schedule hereunto annexed; and a separate and distinct license shall be taken out for or in respect of every town or place where any such promissory notes shall be issued by, or by any agent or agents for or on account of, any banker or bankers or other person or persons; and every such license shall specify the proper name or names and place or places of abode of the person or persons, or the proper name and description of any body corporate to whom the same shall be granted, and also the name of the town or place where, and the name of the bank, as well as the partnership, or other name, style, or firm under which such notes are to be issued; and where any such license shall be granted to persons in partnership, the same shall specify and set forth the names and places of abode of all the persons concerned in the partnership, whether all their names shall appear on the promissory notes to be issued by them or not; and in default thereof such license shall be absolutely void; and every such license which shall be granted between the 10th day of October and the 11th day of November in any year, shall be dated on the 11th day of October; and every such license which shall be granted at any other time, shall be dated on the day on which the same shall be granted; and every such license respectively shall have effect and continue in force from the day of the date thereof until the 10th day of October following, both inclusive.

Regulation respecting licenses.

Persons applying for licenses to deliver specimens of their notes.

27. The banker or bankers, or other person or persons, applying for any such license as aforesaid, shall produce and leave with the proper officer a specimen of the promissory notes proposed to be issued by him or them, to the intent that the license may be framed accordingly; and if any banker or bankers, or other person or persons (except the Bank of England), shall issue, or cause to be issued by any agent, any promissory note for money payable to the

(a) Now Commissioners of Inland Revenue.

bearer on demand, hereby charged with a duty, and allowed to be re-issued as aforesaid, without being licensed so to do in the manner aforesaid, or at any other town or place, or under any other name, style, or firm than shall be specified in his or their license, the banker or bankers, or other person or persons so offending shall, for every such offence, forfeit the sum of 100*l.*

Licenses to continue in force notwithstanding alteration in partnership.

28. Where any such license as aforesaid shall be granted to any persons in partnership, the same shall continue in force for the issuing of promissory notes duly stamped, under the name, style, or firm therein specified, until the 10th day of October inclusive following the date thereof, notwithstanding any alteration in the partnership.

SCHEDULE annexed.

License to be taken out yearly by any banker or bankers, or other person or persons who shall issue any promissory notes for money payable to the bearer on demand and allowed to be re-issued, 30*l.*

ISSUING PROMISSORY NOTES UNDER 5*l.*

(7 GEO. 4, CAP. 6.)

An Act to limit, and after a certain period to prohibit, the issuing of Promissory Notes, under a Limited Sum, in England.

[22nd March, 1826.]

Penalty 20*l.* on issuing any note whatever on demand for less than 5*l.*

3. . . . If any body politic or corporate, or person or persons, shall make, sign, issue, or re-issue in England any promissory note in writing, payable on demand to the bearer thereof, for any sum of money less than 5*l.*, then and in either of such cases every such body politic or corporate, or person or persons, so making, signing, issuing, or re-issuing any such promissory note as aforesaid, . . . shall, for every such note so made, signed, issued, or re-issued, forfeit the sum of 20*l.*

Penalty 20*l.* on uttering, &c., any notes payable to order or bills of exchange under 5*l.* (not payable on demand) otherwise than according to the directions of 17 Geo. 3, c. 30.

4. If any body politic or corporate, or person or persons in England, shall, from and after the passing of this Act, publish, utter, or negotiate any promissory or other note (not being a note payable to bearer on demand, as is hereinbefore mentioned), or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable for the payment of 20*s.*, or above that sum and less than 5*l.*, or on which 20*s.*, or above that sum and less than 5*l.*, shall remain undischarged, made, drawn, or indorsed in any other manner than as is directed by the said Act passed in the 17th year of the reign of His late Majesty; every such body politic or corporate, or person or persons, so publishing, uttering, or negotiating any such promissory or other note (not being such note payable to bearer on demand as aforesaid), bill of exchange, draft, or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l.*(*a*)

Penalties may be recovered

5. The penalties which shall or may be incurred under any of the provisions of this Act, and which are in lieu of the penalties imposed by the said Act of the 17th year of His late Majesty, may be

(*a*) This section is repealed so long as 26 & 27 Vict. c. 105, remains in force. See Statute Law Revision Act, 1873.

sued for, recovered, levied, mitigated, and applied in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the Commissioners of Stamps. under the Stamp Acts.

Commissioners of Stamps shall not stamp notes under 5*l.* payable on demand

7. The Commissioners of Stamps(*b*) shall not be empowered to provide any stamp or stamps for expressing or denoting the duty or duties payable in England upon any promissory note for the payment to the bearer on demand of any sum of money less than the sum of 5*l.*; nor shall it be lawful for the said Commissioners, or any of their officers, to stamp any promissory note, or the form of any promissory note, for the payment to the bearer on demand of any sum of money less than 5*l.*

Act not to extend to orders drawn by any person on his banker.

9. Nothing herein contained shall extend to any draft or order drawn by any person or persons on his, her, or their banker or bankers, or on any person or persons acting as such banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

Notes under 20*l.* to be payable at the bank where issued.

10. Every promissory note payable to bearer on demand, for any sum of money under the sum of 20*l.*, which shall be made and issued after the 5th day of April, 1829, shall be made payable at the bank or place where the same shall be so made and issued as aforesaid: Provided always, that nothing herein contained shall extend to prevent any such promissory note from being made payable at several places, if one of such places shall be the bank or place where the same shall be so issued as aforesaid.

THE BANKING COPARTNERSHIPS REGULATION ACT, 1826.

(7 GEO. 4, CAP. 46.)

An Act for the better Regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled "An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800," *as relates to the same.* [26th May, 1826.]

WHEREAS an Act was passed in the 39th and 40th years of the reign of His late Majesty King George the Third, intituled "An Act for establishing an agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year 1800:" . . . It shall and may be lawful for any bodies politic or corporate erected for the purposes of banking, or for any number of persons united in covenants or copartnership, although such persons so united or carrying on business together shall consist of more than six in number, to carry on the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons

39 & 40 Geo. 3, c. 28.

Copartnerships of more than six in number may carry on business as bankers in England, 65

(*b*) Now Commissioners of Inland Revenue.

miles from London, provided they have no establishment as bankers in London, and that every member shall be liable for the payment of all bills, &c.

in number may lawfully do; and for such bodies politic or corporate, or such persons so united as aforesaid, to make and issue their bills or notes at any place or places in England exceeding the distance of 65 miles from London, payable on demand, or otherwise at some place or places specified upon such bills or notes, exceeding the distance of 65 miles from London, and not elsewhere, and to borrow, owe, or take up any sum or sums of money on their bills or notes so made and issued at any such place or places as aforesaid: Provided always, that such corporations or persons carrying on such trade or business of bankers in copartnership shall not have any house of business or establishment as bankers in London, or at any place or places not exceeding the distance of 65 miles from London; and that every member of any such corporation or copartnership shall be liable to and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed, or taken up by the corporation or copartnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing, or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership; any agreement, covenant, or contract to the contrary notwithstanding.

This Act not to authorise copartnerships to issue within the limits mentioned, any bills payable on demand; nor to draw bills upon any partner, &c., so resident, for less than 50*l.*;

2. Provided always, that nothing in this Act contained shall extend or be construed to extend to enable or authorise any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, either by any member of or person belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, to issue or re-issue in London, or at any place or places not exceeding the distance of 65 miles from London, any bill or note of such corporation or copartnership, which shall be payable to bearer on demand, or any bank post bill; nor to draw upon any partner or agent, or other person or persons who may be resident in London, or at any place or places not exceeding the distance of 65 miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than 50*l.*: Provided also, that it shall be lawful, notwithstanding anything herein or in the said recited Act contained, for any such corporation or copartnership to draw any bill of exchange for any sum of money amounting to the sum of 50*l.* or upwards, payable either in London or elsewhere, at any period after date or after sight.

nor to borrow money, or take up or issue bills of exchange, contrary to the provisions of the

3. Provided also, that nothing in this Act contained shall extend or be construed to extend to enable or authorise any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, to borrow, owe, or take up in London, or at any place or places not exceeding the distance of 65 miles from London, any sum or

sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, nor to make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership contrary to the provisions of the said recited Act of the 39th and 40th years of King George the Third, save as provided by this Act in that behalf: Provided also, that nothing herein contained shall extend, or be construed to extend, to prevent any such corporation or copartnership, by any agent or person authorised by them, from discounting in London or elsewhere any bill or bills of exchange not drawn by or upon such corporation or copartnership, or by or upon any person on their behalf.

recited Act, except as herein provided.

4. Before any such corporation, or copartnership exceeding the number of six persons, in England, shall begin to issue any bills or notes, or borrow, owe, or take up any money on their bills or notes, an account or return shall be made out, according to the form contained in the Schedule marked (A.) to this Act annexed,(*a*) wherein shall be set forth the true names, title, or firm of such intended or existing corporation or copartnership, and also the names and places of abode of all the members of such corporation, or of all the partners

Such copartnerships shall, before issuing any notes, &c., deliver at the Stamp Office in London an account containing the name of the firm, &c.

(*a*) SCHEDULE referred to by this Act.

SCHEDULE (A.)

RETURN or account to be entered at the Stamp Office in London, in pursuance of an Act passed in the seventh year of the reign of King George the Fourth, intituled [*here insert the title of this Act*], viz.:

Firm or name of the banking corporation or copartnership, viz. [*set forth the firm or names.*]

Names and places of abode of all the partners concerned or engaged in such corporation or copartnership, viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such corporation or copartnership, viz. [*set forth all the names and places.*]

Names and descriptions of the public officers of the said banking corporation or copartnership, viz. [*set forth all the names and descriptions.*]

Names of the several towns and places where the bills or notes of the said banking corporation or copartnership are to be issued by the said corporation or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places.*]

A. B., of , secretary [*or other officer describing the office*] of the above corporation or copartnership, maketh oath and saith, that the above doth contain the name, style, and firm of the above corporation or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said corporation or copartnership, and the names, titles, and descriptions of the public officers of the said corporation or copartnership, and the names of the towns and places where the notes of the said corporation or copartnership are to be issued, as the same respectively appear in the books of the said corporation or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of at in the County of .

C.D., justice of the peace in and for the said County.

concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued as hereinafter provided, and also the name of every town and place where any of the bills or notes of such corporation or copartnership shall be issued by any such corporation, or by their agent or agents; and every such amount or return shall be delivered to the Commissioners of Stamps,(*a*) at the Stamp Office in London, who shall cause the same to be filed and kept in the said Stamp Office, and an entry and registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said Commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect on payment of the sum of 1*s.* for every search.

Account to be verified by secretary.

5. Such account or return shall be made out by the secretary or other person, being one of the public officers appointed as aforesaid, and shall be verified by the oath of such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorised and empowered to administer; and such account or return shall, between the 28th day of February and the 25th day of March in every year, after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid to the Commissioners of Stamps, to be filed and kept in the manner and for the purposes as hereinafter mentioned.

Certified copies of returns to be evidence of the appointment of the public officers, &c.

6. A copy of any such account or return so filed or kept and registered at the Stamp Office, as by this Act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the Commissioners of Stamps for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a Commissioner or Commissioners, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such corporation or copartnership were members thereof at the date of such account or return.

Commissioners of Stamps to give certified copies of affidavits, on payment of 10*s.*

7. The said Commissioners of Stamps for the time being shall, and they are hereby required, upon application made to them by any person or persons requiring a copy certified according to this Act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of 10*s.* and no more.

(*a*) Now Commissioners of Inland Revenue.

8. Provided also, that the secretary or other officer of every such corporation or copartnership shall, and he is hereby required, from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the Commissioners of Stamps as aforesaid, a further account or return according to the form contained in the Schedule marked (B.) to this Act annexed,(*a*) of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such corporation or copartnership, and also of the name or names of any person or persons who shall have ceased to be members of such corporation or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such corporation or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the Stamp Office in London, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

Account of new officers or members in the course of any year to be made.

(*a*) SCHEDULE referred to by this Act.

SCHEDULE (B.)

RETURN or account to be entered at the Stamp Office in London, on behalf of [*name the corporation or copartnership*] in pursuance of an Act passed in the seventh year of the reign of King George the Fourth, intituled [*insert the title of this Act*], viz.:

Names of any and every new or additional public officer of the said corporation or copartnership; viz.

A. B. in the room of *C. D.* deceased or removed [*as the case may be*] [*set forth every name.*]

Names of any and every person who may have ceased to be a member of such corporation or copartnership, viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such corporation or copartnership [*set forth every name.*]

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B., of , secretary [*or other officer*] of the above-named corporation or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above corporation or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said corporation or copartnership, and of any and every person who hath become a member of the said copartnership since the registry of the said corporation or copartnership on the day of last, as the same respectively appear on the books of the said corporation or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the day of , at , in the County of .

C. D., justice of the peace in and for the said County.

Copartnerships shall sue and be sued in the name of their public officers.

9. All actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons, who may be at any time indebted to any such copartnership carrying on business under the provisions of this Act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this Act, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner for and on behalf of such copartnership; and all actions or, suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted and prosecuted against any one or more of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal defendant for and on behalf of such copartnership; and all indictments, informations and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such copartnership, shall and lawfully may be had, preferred and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of such copartnership; and any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime or offence; and in all other allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and the death, resignation, removal, or any act of such public officer, shall not abate

or prejudice any such action, suit, indictment, information, prosecution or other proceeding commenced against, or by or on behalf of such copartnership, but the same may be continued, prosecuted and carried on in the name of any other of the public officers of such copartnership for the time being.

Not more than one action for the recovery of one demand.

10. No person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such corporation or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit, by or against any one of the public officers nominated as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such copartnership.

Decrees of a court of equity against the public officer to take effect against the copartnership.

11. All and every decree or decrees, order or orders made or pronounced in any suit or proceeding in any Court of equity against any public officer of any such copartnership carrying on business under the provisions of this Act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties members before the Court to and in any such suit or proceeding; and it shall and may be lawful for any Court in which such order or decree shall have been made, to cause such order and decree to be enforced against every or any member of such copartnership, in like manner, as if every member of such copartnership were parties before such Court to and in such suit or proceeding, and although all such members are not before the Court.

Judgments against such public officer shall operate against the copartnership.

12. All and every judgment and judgments, decree or decrees, which shall at any time after the passing of this Act be had or recovered or entered up as aforesaid, in any action, suit, or proceedings in law or equity against any public officer of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the porperty of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and the bankruptcy, insolvency, or stopping payment of any such public officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and such copartnership and every member thereof, and the capital stock and effects of every member of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency, or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such public officer of such copartnership had happened or taken place.

Execution upon judgment may be issued against any member of the copartnership.

13. Execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking under the provisions of this Act, whether as plaintiff or defendant, may be issued against any member or members for the time being of such corporation or copartnership; and in case any such execution against any member or members for the time being of any such corporation or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having obtained judgment against such public officer for the time being, to issue execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts or engagement or engagements in which such judgment may have been obtained was or were entered into, or became a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained: Provided always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open Court, by the Court in which such judgment shall have been obtained, and when motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or copartnership.

Officer, &c., in such cases indemnified.

14. Provided always, that every such public officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, by contribution from the other members of such copartnership, as in the ordinary cases of copartnership.

Governor and company of the Bank of England may empower agents to carry on banking business at any place in England.

15. "And to prevent any doubts that might arise whether the said governor and company, under and by virtue of their charter, and the several Acts of Parliament which have been made and passed in relation to the affairs of the said governor and company, can lawfully carry on the trade or business of banking, otherwise than under the immediate order, management, and direction of the court of directors of the said governor and company;" be it therefore enacted, that it shall and may be lawful for the said governor and company to authorise and empower any committee or committees, agent or agents, to carry on the trade and business of banking, for and on behalf of the said governor and company, at any place or places in that part of the United Kingdom called England, and for that purpose to invest such committee or committees, agent or agents, with such powers of management and superintendence, and such authority to appoint cashiers and other officers and servants as may be necessary or convenient for carrying on such trade and business as aforesaid; and for the same purpose to issue to such committee or committees, agent or agents, cashier or cashiers, or

other officer or officers, servant or servants, cash, bills of exchange, bank post bills, bank notes, promissory notes, and other securities for payment of money: Provided always, that all such acts of the said governor and company shall be done and exercised in such manner as may be appointed by any bye-laws, constitutions, orders, rules and directions, from time to time hereafter to be made by the general court of the said governor and company in that behalf, such bye-laws not being repugnant to the laws of that part of the United Kingdom called England: and in all cases where such bye-laws, constitutions, orders, rules, or directions of the said general Court shall be wanting, in such manner as the governor, deputy-governor, and directors, or the major part of them assembled, whereof the said governor or deputy-governor is always to be one, shall or may direct, such directions not being repugnant to the laws of that part of the United Kingdom called England; anything in the said charter or Acts of Parliament, or other law, usage, matter, or thing to the contrary thereof notwithstanding: Provided always, that in any place where the trade and business of banking shall be carried on for and on behalf of the said governor and company of the Bank of England, any promissory note issued on their account in such place shall be made payable in coin in such place as well as in London.

Copartnerships may issue unstamped notes, on giving bond.

16. If any corporation or copartnership carrying on the trade or business of bankers under the authority of this Act shall be desirous of issuing and re-issuing notes in the nature of bank notes, payable to the bearer on demand, without the same being stamped as by law is required, it shall be lawful for them so to do on giving security by bond to His Majesty, in which bond two of the directors, members, or partners of such corporation or copartnership, shall be the obligors, together with the cashier or cashiers, or accountant or accountants employed by such corporation or copartnership, as the said Commissioners of Stamps shall require; and such bonds shall be taken in such reasonable sums as the duties may amount unto during the period of one year, with condition to deliver to the said Commissioners of Stamps, within fourteen days after the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October, in every year, whilst the present stamp duties shall remain in force, a just and true account, verified upon the oaths or affirmations of two directors, members, or partners of such corporation or copartnership, and of the said cashier or cashiers, accountant or accountants, or such of them as the said Commissioners of Stamps shall require, such oaths or affirmations to be taken before any justice of the peace, and which oaths and affirmations any justice of the peace is hereby authorised and empowered to administer, of the amount or value of all their promissory notes in circulation on some given day in every week, for the space of one quarter of a year prior to the quarter day immediately preceding the delivery of such account, together with the average amount or value thereof according to such account; and also to pay or cause to be paid into the hands of the receivers-general of stamp duties in Great Britain, as a composition for the duties which would otherwise have been payable for such promissory notes issued within the space of one year, the sum of 7*s*. for every 100*l*., and also for the fractional part of 100*l*. of

the said average amount or value of such notes in circulation, according to the true intent and meaning of this Act; and on due performance thereof such bond shall be void; and it shall be lawful for the said Commissioners to fix the time or times of making such payment, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said Commissioners or the major part of them, and as often as the same shall be forfeited, or the party or parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

No corporation compelled to take out more than four licenses.

17. Provided always, that no such corporation or copartnership shall be obliged to take out more than four licenses for the issuing of any promissory notes for money payable to the bearer on demand, allowed by law to be re-issued in all for any number of towns or places in England; and in case any such corporation or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in England, then after taking out three distinct licenses for three of such towns or places, such corporation or copartnership shall be entitled to have all the rest of such towns or places included in a fourth license.

Penalty on copartnership neglecting to send returns, 500*l.*

18. If any such corporation or copartnership, exceeding the number of six persons in England, shall begin to issue any bills or notes, or to borrow, owe, or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this Act, or shall neglect or omit to cause such account or return to be renewed yearly and every year between the days or times hereinbefore appointed for that purpose, such corporation or copartnership so offending shall, for each and every week they shall so neglect to make such account and return, forfeit 500*l.*; and if any secretary or other officer of such corporation or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this Act required to be contained or inserted in such account or return, the corporation or copartnership to which such secretary or other officer so offending shall belong shall for every such offence forfeit the sum of 500*l.*, and the said secretary or other officer so offending shall also for every such offence forfeit the sum of 100*l.*; and if any such secretary or other officer making out or signing any such account or return as aforesaid, shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such secretary or other officer so offending and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Penalties for making false returns.

False oath perjury.

Penalty on copartnership for issuing bills payable on demand;

19. If any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, shall, either by any member of or person belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, issue or re-issue in London, or at any place or places not exceeding the distance of sixty-five miles from

London, any bill or note of such corporation or copartnership which shall be payable on demand; or shall draw upon any partner or agent or other person or persons who may be resident in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than fifty pounds; or if any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, shall borrow, owe, or take up in London, or at any place or places not exceeding the distance of sixty-five miles from London, any sum or sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, or shall make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership contrary to the provisions of the said recited Act of the 39th and 40th years of King George the Third, save as provided by this Act, such corporation or copartnership so offending or on whose account or behalf any such offence as aforesaid shall be committed, shall for every such offence forfeit the sum of 50*l.*

or drawing bills of exchange payable on demand, or for less than 50*l.*; or borrowing money on bills, except as herein provided.

20. Provided also, that nothing in this Act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the said Governor and Company of the Bank of England; except as the said exclusive privilege of the said Governor and Company is by this Act specially altered and varied.

Not to affect the rights of Bank of England, except as herein specially altered.

21. All pecuniary penalties and forfeitures imposed by this Act shall and may be sued for and recovered in His Majesty's Court of Exchequer at Westminster, in the same manner as penalties incurred under any Act or Acts relating to stamp duties may be sued for and recovered in such Court.

Penalties, how recovered.

BANK NOTES AND BILLS STAMP DUTIES COMPOSITION.

(9 GEO. 4, CAP. 23.)

An Act to enable Bankers in England to issue certain Unstamped Promissory Notes and Bills of Exchange, upon Payment of a Composition in lieu of the Stamp Duties thereon.

1. It shall be lawful for any person or persons carrying on the business of a banker or bankers in England (except within the city of London, or within three miles thereof), having first duly obtained a license for that purpose, and given security by bond in manner hereinafter mentioned, to issue, on unstamped paper, promissory notes for any sum of money amounting to 5*l.* or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to

Certain bankers may issue unstamped promissory notes and bills of exchange subject to the regulations herein mentioned.

order on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof; provided such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster, or the borough of Southwark, or provided such bills of exchange be drawn by any banker or bankers, at a town or place where he or they shall be duly licensed to issue unstamped notes and bills under the authority of this Act, upon himself or themselves, or his or their copartner or copartners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

Commissioners of Stamps may grant licenses to issue unstamped notes and bills.

2. It shall be lawful for any two or more of the Commissioners of Stamps to grant to all persons carrying on the business of bankers in England (except as aforesaid), who shall require the same, licenses authorising such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which said licenses shall be and are hereby respectively charged with a stamp duty of 30*l.* for every such license.

A separate license to be taken for every place where such notes or bills shall be issued, but not to exceed four licenses for any number of such places.

3. A separate license shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: Provided always, that no person or persons shall be obliged to take out more than four licenses in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or places, then, after taking out three distinct licenses for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in a fourth license.

Regulations respecting licenses.

4. Every license granted under the authority of this Act shall specify all the particulars required by law to be specified in licenses to be taken out by persons issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such license which shall be granted between the 10th day of October and the 11th day of November in any year shall be dated on the 11th day of October, and every such license which shall be granted at any other time shall be dated on the day on which the same shall be granted; and every such license shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof until the 10th day of October then next following, both inclusive, and no longer.

Commissioners may cancel licenses already taken out, and grant licenses under this Act in lieu thereof.

5. Provided always, that where any banker or bankers shall have obtained the license required by law for issuing promissory notes payable to bearer on demand, at any town or place in England, and during the continuance of such license shall be desirous of taking out a license to issue at the same town or place unstamped promissory notes and bills of exchange under the provisions of this Act, it shall be lawful for the Commissioners of Stamps to cancel and allow as spoiled the stamp upon the said first-mentioned license, and in lieu thereof to grant to such banker or bankers a license under the authority of this Act; and every such last-mentioned license shall

also authorise the issuing and re-issuing of all promissory notes payable to the bearer on demand, which such banker or bankers may by law continue to issue or re-issue at the same town or place, on paper duly stamped.

6. Provided always, that if any banker or bankers, who shall take out a license under the authority of this Act, shall issue, under the authority either of this or any other Act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or their promissory notes for payment of money to the bearer on demand, of whatever amount such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue for the first time any such promissory note as aforesaid on stamped paper.

Bankers while licensed under this Act shall not issue, for the first time, notes on stamped paper.

7. Before any license shall be granted to any person or persons to issue or draw any unstamped promissory notes or bills of exchange under the authority of this Act, such person or persons shall give security, by bond, to His Majesty, with a condition that if such person or persons do and shall from time to time enter or cause to be entered in a book or books to be kept for that purpose, an account of all such unstamped promissory notes and bills of exchange as he or they shall so as aforesaid issue or draw, specifying the amount or value thereof respectively, and the several dates of the issuing thereof; and in like manner also, a similar account of all such promissory notes as having been issued as aforesaid, shall have been cancelled, and the dates of the cancelling thereof, and of all such bills of exchange as, having been drawn or issued as aforesaid, shall have been paid, and the dates of the payment thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to, and permit the same to be examined and inspected by, the said Commissioners of Stamps, or any officer of stamps appointed under the hands and seals of the said Commissioners for that purpose; and also do and shall deliver to the said Commissioners of Stamps half yearly (that is to say), within fourteen days after the 1st day of January and the 1st day of July in every year, a just and true account in writing, verified upon the oaths or affirmations (which any justice of the peace is hereby empowered to administer), to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant, or chief clerk, or of such of them as the said Commissioners shall require, of the amount or value of all unstamped promissory notes and bills of exchange, issued under the provisions of this or any former Act, in circulation within the meaning of this Act on a given day (that is to say), on Saturday in every week, for the space of half a year prior to the half yearly day immediately preceding the delivery of such account, together with the average amount or value of such notes and bills so in circulation, according to such account; and also do and shall pay or cause to be paid to the Receiver-General of Stamp Duties in Great Britain, or to some other person duly authorised by the Commissioners of Stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes and bills of exchange issued or in circulation during such half year, the sum of three shillings and sixpence for

Bankers licensed to issue unstamped notes or bills shall give security by bond, for the due performance of the conditions herein contained.

every one hundred pounds, and also for the fractional part of one hundred pounds, of the said average amount or value of such notes and bills in circulation, according to the true intent and meaning of this Act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue.

For what period notes and bills are to be deemed in circulation.

8. Every unstamped promissory note payable to the bearer on demand, issued under the provisions of this Act, shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting, nevertheless, the period during which such note shall be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable; and every unstamped promissory note payable to order, and every unstamped bill of exchange so as aforesaid issued, shall, for the purpose aforesaid, be deemed to be in circulation from the day of the issuing to the day of the payment thereof, both days inclusive: Provided always, that every such promissory note payable to order, and bill of exchange as aforesaid, which shall be paid in less than seven days from the issuing thereof, shall, for the purpose aforesaid, be included in the account of notes and bills in circulation on the Saturday next after the day of the issuing thereof as if the same were then actually in circulation.

Regulations respecting the bonds to be given pursuant to this Act.

9. In every bond to be given pursuant to the directions of this Act the person or persons intending to issue or draw any such unstamped promissory notes and bills of exchange as aforesaid, or such and so many of the said persons as the Commissioners of Stamps shall require, shall be the obligors; and every such bond shall be taken in the sum of one hundred pounds, or in such larger sum as the said Commissioners of Stamps may judge to be the probable amount of the composition or duties that will be payable from such person or persons, under or by virtue of this Act, during the period of one year; and it shall be lawful for the said Commissioners to fix the time or times of payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said Commissioners, and as often as the same shall be forfeited, or the parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Fresh bonds to be given on alterations of copartnerships.

10. If any alteration shall be made in any copartnership of persons who shall have given any such security by bond as by this Act is directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall be given by the remaining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as a security for the duties which may be due and owing, or may become due and owing, in respect of the unstamped notes and bills which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped notes and bills issued or to be issued by the persons composing the new copartner-

ship: Provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for all the duties they may incur so long as they shall exist, or the persons composing the same, or any of them, shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said Commissioners of Stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

Penalty on bankers neglecting to renew their bonds.

11. If any person or persons who shall have given security, by bond, to His Majesty, in the manner hereinbefore directed, shall refuse or neglect to renew such bond when forfeited, and as often as the same is by this Act required to be renewed, such person or persons so offending shall, for every such offence, forfeit and pay the sum of 100*l.*

Penalty for post-dating unstamped notes or bills.

12. If any person or persons who shall be licensed under the provisions of this Act shall draw or issue, or cause to be drawn or issued, upon unstamped paper, any promissory note payable to order, or any bill of exchange which shall bear date subsequent to the day on which it shall be issued, the person or persons so offending shall, for every such note or bill so drawn or issued, forfeit the sum of 100*l.*

This Act not to exempt from penalties any persons issuing unstamped notes or bills not in accordance herewith.

13. Nothing in this Act contained shall extend, or be construed to extend, to exempt or relieve from the forfeitures or penalties imposed by any Act or Acts now in force, upon persons issuing promissory notes or bills of exchange not duly stamped as the law requires, any person or persons who, under any colour or pretence whatsoever, shall issue any unstamped promissory note or bill of exchange, unless such person or persons shall be duly licensed to issue such note or bill under the provisions of this Act; and such note or bill shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

Recovery of penalties.

14. All pecuniary forfeitures and penalties which may be incurred under any of the provisions of this Act shall be recovered for the use of His Majesty, in His Majesty's Court of Exchequer at Westminster, by action or information, in the name of His Majesty's Attorney or Solicitor-General in England.

Not to affect the privileges of the Bank of England.

15. Provided always, that nothing in this Act contained shall extend, or be construed to extend, to prejudice, alter or affect any of the rights, powers, or privileges of the Bank of England.

RESTRAINING NEGOTIATION OF NOTES UNDER 5*l*.

(9 GEO. 4, CAP. 65.)

An Act to restrain the Negotiation, in England, of Promissory Notes and Bills under a limited Sum, issued in Scotland or Ireland.

[15th July, 1828.]

No corporation or person shall utter in England notes or bills under 5*l*. which have been made or issued in Scotland or Ireland, under penalty of 20*l*.

1. If any body politic or corporate, or person or persons, shall, by any art, device, or means whatsoever, publish, utter, negotiate, or transfer, in any part of England, any promissory or other note, draft, engagement, or undertaking in writing, made payable on demand to the bearer thereof, and being negotiable or transferable, for the payment of any sum of money less than 5*l*., or on which less than the sum of 5*l*. shall remain undischarged, which shall have been made or issued, or shall purport to have been made or issued, in Scotland or Ireland, or elsewhere out of England, wheresoever the same shall or may be payable, every such body politic or corporate, or person or persons, so publishing, uttering, negotiating, or transferring any such note, bill, draft, engagement, or undertaking, in any part of England shall forfeit and pay for every such offence any sum not exceeding 20*l*. nor less than 5*l*., at the discretion of the justice of the peace who shall hear and determine such offence.

Mode of recovering penalties.

48 Geo. 3, c. 88.

2. The penalties which may be incurred under the provisions of this Act shall and may be recovered in a summary way by information on complaint, before a justice or justices of the peace, and shall be levied and applied in the manner directed by an Act passed in the 48th year of the reign of His late Majesty King George the Third, intituled "An Act to restrain the negotiation of promissory notes and inland bills of exchange under a limited sum in England," with respect to the penalties by the said last-mentioned Act imposed; and all and every the clauses and provisions in the said last-mentioned Act contained, relating to the recovery and application of the penalties thereby imposed, shall be applied and put in execution for the recovery and application of the penalties by this Act imposed, as fully and effectually, to all intents and purposes, as if such clauses and provisions had been herein repeated and expressly re-enacted.

The Treasury may order a remission or mitigation of penalties.

3. Provided always, that it shall and may be lawful for the Treasury, to order and direct that the whole or any part of any penalty which shall be incurred under this Act shall and may be remitted, or mitigated or abated to such amount, and in such manner and upon such conditions as to the Treasury may seem fit and proper.

Not to extend to drafts on bankers for the use of the drawer.

4. Provided always, that nothing herein contained shall extend to any draft or order drawn by any person or persons on his, her, or their banker or bankers, or on any person or persons acting as such banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

RETURNS OF BANK NOTES IN CIRCULATION.

(3 & 4 WILL. 4, CAP. 83.)

An Act . . . to authorize Banks to issue Notes payable in London for less than 50*l.* [28th August, 1833.]

2. It shall be lawful for any body politic or corporate whatsoever, erected or to be erected, and for any other persons united or to be united in covenants or partnership, exceeding the number of six persons, carrying on business as bankers, to make any bill of exchange or promissory note of such corporation or copartnership payable in London by any agent of such corporation or copartnership in London, or to draw any bill of exchange or promissory note upon any such agent in London, payable on demand or otherwise in London, and for any less amount than 50*l.*, any thing in the said recited Act of the 7th year of the reign of His late Majesty King George the Fourth, or in any other Act, to the contrary notwithstanding.

Banks of more than six persons may draw on agent in London, on demand or otherwise, for less than 50*l.*, notwithstanding the Act 7 Geo. 4, c. 46.

THE BANK OF ENGLAND PRIVILEGES ACT, 1833.

(3 & 4 WILL. 4, CAP. 98.)

An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges for a limited Period, under certain conditions. [29th August, 1833.]

1. The Bank of England shall have and enjoy such exclusive privilege of banking as is given by this Act, as a body corporate, for the period and upon the terms and conditions hereinafter mentioned, and subject to termination of such exclusive privilege at the time and in the manner in this Act specified.

Bank of England to enjoy an exclusive privilege of banking upon certain conditions.

2. During the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in covenants or partnerships, exceeding six persons, shall make or issue in London, or within 65 miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand: provided always, that nothing herein or in the said recited Act of the 7th year of the reign of His late Majesty King George the Fourth contained shall be construed to prevent any body politic or corporate, or any society or company, or incorporated company or corporation, or copartnership, carrying on and transacting banking business at any greater distance than 65 miles from London, and not having any house of business or establishment as bankers in London, or within 65 miles thereof (except as hereinafter mentioned), to make and issue their bills and notes, payable on demand or otherwise, at the place at which the same shall be issued, being more than 65 miles from London, and also in London, and to have an agent or agents in London, or at any other place at which such bills or notes shall be made payable for the purpose of payment only, but no such bill or note shall be for any sum less than 5*l.*, or be re-issued in London, or within 65 miles thereof.

During such privilege, no banking company of more than six persons to issue notes payable on demand within London, or 65 miles thereof.

Any company or partnership may carry on business of banking in London, or within 65 miles thereof, upon the terms herein mentioned.

3. "And whereas the intention of this Act is, that the Bank of England should, during the period stated in this Act (subject nevertheless to such redemption as is described in this Act), continue to hold and enjoy all the exclusive privileges of banking given by the said recited Act of the 39th and 40th years of the reign of His Majesty King George the Third aforesaid, as regulated by the said recited Act of the 7th year of His late Majesty King George the Fourth, or any prior or subsequent Act or Acts of Parliament, but no other or further exclusive privilege of banking: and whereas doubts have arisen as to the construction of the said Acts, and as to the extent of such exclusive privilege; and it is expedient that all such doubts should be removed," be it therefore declared and enacted, that any body politic or corporate, or society, or company, or partnership, although consisting of more than six persons, may carry on the trade or business of banking in London, or within 65 miles thereof, provided that such body politic or corporate, or society, or company, or partnership do not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this Act to the Bank of England.

All notes of the Bank of England payable on demand which shall be issued out of London shall be payable at the place where issued, &c.

4. All promissory notes payable on demand of the Bank of England which shall be issued at any place in that part of the United Kingdom called England out of London, where the trade and business of banking shall be carried on for and on behalf of the Governor and Company of the Bank of England, shall be made payable at the place where such promissory notes shall be issued; and it shall not be lawful for the said Governor and Company, or any committee, agent, cashier, officer, or servant of the said bank, to issue, at any such place out of London, any promissory note payable on demand which shall not be made payable at the place where the same shall be issued, anything in the said recited Act of the seventh year aforesaid to the contrary notwithstanding.

Bank notes to be a legal tender, except at the bank and branch banks.(a)

6. Unless and until Parliament shall otherwise direct, a tender of a note or notes of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender, to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount for all sums above 5*l.* on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their said notes in legal coin: Provided always, that no such note or notes shall be deemed a legal tender of payment by the Governor and Company of the Bank of England, or any branch bank of the said Governor and Company; but the said Governor and Company are not to become liable or be required to pay and satisfy, at any branch bank of the said Governor and Company, any note or notes of the said bank not made specially payable at such branch bank; but the said Governor and Company shall be liable to pay and satisfy at the Bank of England in London all notes of the said bank, or of any branch thereof.

Accounts of bullion, &c., and of notes

8. An account of the amount of bullion and securities in the Bank of England belonging to the said governor and company, and of

(*a*) Not legal tender in Ireland (8 & 9 Vict. c. 37, s. 6), nor in Scotland (8 & 9 Vict. c. 38, s. 15).

notes in circulation, and of deposits in the said bank, shall be transmitted weekly to the Chancellor of the Exchequer for the time being, and such accounts shall be consolidated at the end of every month, and an average state of the bank accounts of the preceding three months, made from such consolidated accounts as aforesaid, shall be published every month in the next succeeding *London Gazette.* In circulation to be sent weekly to the Chancellor of the Exchequer, &c.

14. All the powers, authorities, franchises, privileges, and advantages given or recognised by the said recited Act of the 39th and 40th years aforesaid, as belonging to or enjoyed by the governor and company of the Bank of England, or by any subsequent Act or Acts of Parliament, shall be, and the same are hereby declared to be, in full force and continued by this Act, except so far as the same are altered by this Act, subject nevertheless to such redemption upon the terms and conditions following; (that is to say), that at any time, upon twelve months' notice to be given after the 1st day of August, 1855, and upon repayment by Parliament to the said governor and company, or their successors, of the sum of 11,015,100*l.*, being the debt which will remain due from the public to the said governor and company after the payment of the one-fourth of the debt of 14,686,800*l.*, as hereinbefore provided, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors of all arrears of the sum of 100,000*l.* per annum in the said Act of the thirty-ninth and fortieth years aforesaid mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company and their successors upon all such tallies, Exchequer orders, Exchequer bills, or parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then (unless under the proviso hereinbefore contained), the said exclusive privileges of banking granted by this Act shall cease and determine at the expiration of such notice of twelve months. Provisions of Act of 39 & 40 Geo. 3, to remain in force, except as altered by this Act.

LEGAL PROCEDURE BY JOINT STOCK BANKS.

(1 & 2 VICT. CAP. 96.)(*b*)

An Act to amend, until the end of the next Session of Parliament, the Law relative to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies. [14th August, 1838.]

1. Any person now being or having been, or who may hereafter be or have been, a member of any copartnership now carrying on or which may hereafter carry on the business of banking under the provisions of the said recited Acts may in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership, or the funds or property Banking copartnerships may sue and be sued. (7 Geo. 4, c. 46; 6 Geo. 4, c. 42.)

(*b*) Made perpetual by 5 & 6 Vict. c. 85.

thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity against any public officer appointed or to be appointed under the provisions of the said Acts to sue and be sued on the behalf of the said copartnership; and any such public officer may in his own name commence and prosecute any action, suit, or other proceeding at law or in equity, against any person being or having been a member of the said copartnership, either alone or jointly with any other person, against whom any such copartnership has or may have any demand whatsoever; and every person being or having been a member of any such copartnership shall, either solely or jointly with any other person (as the case may require), be capable of proceeding against any such copartnership by their public officer, and be liable to be proceeded against, by or for the benefit of the said copartnership, by such public officer as aforesaid, by such proceedings and with the same legal consequences as if such person had not been a member of the said copartnership; and no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants or any of them respectively, or any other person in whom any interest may be averred, or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and all such actions, suits, and proceedings shall be conducted and have effect as if the same had been between strangers.

Proceedings in an action may be pleaded in bar of any other action.

2. In case the merits of any demand by or against any such copartnership shall have been determined in any action or suit by or against any such public officer, the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the public officer of the same copartnership for the same demand.

Extending provisions of recited Acts to present Act.

3. All the provisions of the said recited Acts relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this Act.

A member's share in capital of copartnership not to be set off against any demand which such copartnership may have against him.

4. No claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

LEGAL PROCEDURE BY JOINT STOCK BANKS.

(3 & 4 VICT. CAP. 111.)

An Act . . . to extend the Provisions of an Act of the First and Second Years of Her present Majesty, relating to Legal Proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies.

[11th August, 1840.]

Punishing members of banking companies, embezzling notes, &c. 3 & 4 Will. 4. c. 98.

2. If any person or persons, being a member or members of any banking copartnership within the meaning of the said Act, or of any other banking copartnership consisting of more than six persons, formed under or in pursuance of an Act passed in the 3rd and 4th years of the reign of King William the Fourth, intituled "An Act for giving to the Corporation of the Governor and Company of the Bank of England certain privileges, for a limited period, under certain conditions," shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud any such copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding in the name of any of the officers for the time being of any such copartnership in whose name any action or suit might be lawfully brought against any member or members of any such copartnership for every such fraud, forgery, crime, or offence, and may thereupon be lawfully convicted, as if such person or persons had not been or was or were not a member or members of such copartnership; any law, usage, or custom to the contrary notwithstanding.

SPIRITUAL PERSONS PROHIBITED BEING MEMBERS OF JOINT STOCK BANKS.

(4 VICT. CAP. 14.)

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships.(a)

[18th May, 1841.]

Whereas divers associations and copartnerships, consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades and dealings for gain and profit, and have accordingly for some time past been and are now engaged in carrying on the same by means of boards of directors or managers, committees, or other officers, acting on behalf of all the members or shareholders of or persons otherwise interested in such associations or copartnerships: and whereas divers spiritual persons, having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been members or share-

(a) This statute is a re-enactment of 1 Vict. c. 10, originally temporary and limited in operation, and repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

holders of or otherwise interested in divers of such associations and copartnerships: . . . No such association or copartnership already formed or which may be hereafter formed, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into, or which shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of or otherwise interested in the same, but all such associations and copartnerships shall have the same validity and all such contracts shall and may be enforced in the same manner to all intents and purposes as if no such spiritual person had been or was a member, partner, or shareholder of or interested in such association or copartnership: Provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on trade or such dealing as aforesaid in person.

No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members thereof.

No spiritual person beneficed or performing ecclesiastical duty to act as director.

BANK NOTES ISSUE REGULATION, AND BANK OF ENGLAND PRIVILEGES ACT.

(7 & 8 Vict. Cap. 32.)

An Act to regulate the Issue of Bank Notes, and for giving to the . . . Bank of England certain Privileges for a limited Period.

[19th July, 1844.]

Bank to establish a separate department for the issue of notes.

1. The issue of promissory notes of the Governor and Company of the Bank of England payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business of the said Governor and Company; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said Governor and Company in a separate department to be called "The Issue Department of the Bank of England," subject to the rules and regulations hereinafter contained; and it shall be lawful for the court of directors of the said Governor and Company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such Issue Department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any bye-laws, rules or regulations which may be made for that purpose: Provided nevertheless, that the said Issue Department shall always be kept separate and distinct from the banking department of the said Governor and Company.

Management of the issue by Bank of England.

2. There shall be transferred, appropriated, and set apart by the said Governor and Company to the Issue Department of the Bank of England securities to the value of fourteen million pounds, whereof he debt due by the public to the said Governor and Com pany shall

be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said Governor and Company to the said Issue Department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the Banking Department thereof; and thereupon there shall be delivered out of the said Issue Department into the said Banking Department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said Issue Department of the Bank of England: and the whole amount of Bank of England notes then in circulation, including those delivered to the Banking Department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said Issue Department; and from thenceforth it shall not be lawful for the said Governor and Company to increase the amount of securities for the time being in the said Issue Department, save as hereinafter is mentioned, but it shall be lawful for the said Governor and Company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of fourteen million pounds, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said Issue Department as aforesaid it shall not be lawful for the said Governor and Company to issue Bank of England notes, either into the Banking Department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said Issue Department under the provisions of this Act, or in exchange for securities acquired and taken in the said Issue Department under the provisions herein contained: Provided always, that it shall be lawful for the said Governor and Company in their Banking Department to issue all such Bank of England notes as they shall at any time receive from the said Issue Department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons.

3. It shall not be lawful for the Bank of England to retain in the Issue Department of the said Bank at any one time an amount of silver bullion exceeding one-fourth part of the gold coin and bullion at such time held by the Bank of England in the Issue Department.

Proportion of silver bullion to be retained in the Issue Department.

4. All persons shall be entitled to demand from the Issue Department of the Bank of England, Bank of England notes in exchange for gold bullion, at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold: Provided always, that the said Governor and Company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said Governor and Company at the expense of the parties tendering such gold bullion.

All persons may demand of the Issue Department notes for gold bullion.

5. Provided, always, that if any banker who on the 6th day of May, 1844, was issuing his own bank notes shall cease to issue his own bank notes, it shall be lawful for Her Majesty in Council at any time after the cessation of such issue, upon the application of the said Governor and Company, to authorise and empower the said

Power to increase securities in the Issue Department, and issue

additional notes.

Governor and Company to increase the amount of securities in the said Issue Department beyond the total sum or value of fourteen million pounds, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such Order in Council, and so from time to time: Provided always, that such increased amount of securities specified in such Order in Council, shall in no case exceed the proportion of two-thirds the amount of bank notes which the banker so ceasing to issue may have been authorised to issue under the provisions of this Act; and every such Order in Council shall be published in the next succeeding *London Gazette.*

Account to be rendered by the Bank of England.

6. An account of the amount of Bank of England notes issued by the Issue Department of the Bank of England and of gold coin and of gold and silver bullion respectively, and of securities in the said Issue Department, and also an account of the capital stock, and the deposits, and of the money and securities belonging to the said Governor and Company in the Banking Department of the Bank of England, on some day in every week to be fixed by the Commissioners of Stamps and Taxes, shall be transmitted by the said Governor and Company weekly to the said Commissioners in the form prescribed in the schedule hereto annexed marked (A.),(*a*) and shall be published by the said Commissioners in the next

(*a*) The following is the schedule referred to:—

SCHEDULE (A).

BANK OF ENGLAND.

An Account pursuant to the Act 7 & 8 Vict. c. 32, for the week ending on the day of .

Issue Department.

	£		£
Notes issued		Government debt... ...	
		Other securities	
		Gold coin and bullion ...	
		Silver bullion	
	£		£

Dated the day of , 18 . ____________Cashier.

Banking Department.

	£		£
Proprietors' capital ...		Government securities (including dead weight annuity)	
Rest...		Other securities	
Public deposits (to include Exchequer, Savings Banks, Commissioners of National Debt and Dividend Accounts		Notes	
Other deposits		Gold and silver coin ...	
Seven-day and other bills...			
	£		£

Dated the day of , 18 . ____________Cashier.

succeeding *London Gazette* in which the same may be conveniently inserted.

7. The said Governor and Company of the Bank of England shall be released and discharged from the payment of any stamp duty, or composition in respect of stamp duty, upon or in respect of their promissory notes payable to bearer on demand; and all such notes shall be and continue free and wholly exempt from all liability to any stamp duty whatsoever. Bank of England exempted from stamp duty upon their notes.

9. In case, under the provisions hereinbefore contained, the securities held in the said Issue Department of the Bank of England shall at any time be increased beyond the total amount of fourteen million pounds, then and in each and every year in which the same shall happen, and so long as such increase shall continue, the said Governor and Company shall, in addition to the said annual sum of 180,000*l.*, make a further payment or allowance to the public, equal in amount to the net profit derived in the said Issue Department during the current year from such additional securities, after deducting the amount of the expenses occasioned by the additional issue during the same period, which expenses shall include the amount of any and every composition or payment to be made by the said Governor and Company to any banker in consideration of the discontinuance at any time hereafter of the issue of bank notes by such banker. Bank to allow the public the profits of increased circulation.

10. No person other than a banker who, on the 6th day of May, 1844, was lawfully issuing his own bank notes shall make or issue bank notes in any part of the United Kingdom. No new bank of issue.

11. It shall not be lawful for any banker to draw, accept, make, or issue, in England or Wales, any bill of exchange or promissory note or engagement for the payment of money payable to bearer on demand, or to borrow, owe, or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker who was on the 6th day of May, 1844, carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes, under the authority of a license to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: Provided always, that it shall not be lawful for any company or partnership now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole. Restriction against issue of bank notes.

12. If any banker in any part of the United Kingdom who shall be entitled to issue bank notes shall become bankrupt, or shall cease to carry on the business of a banker, or shall discontinue the issue of bank notes, either by agreement with the Bank of England or other- Bankers ceasing to issue notes may not resume.

wise, it shall not be lawful for such banker at any time thereafter to issue any such notes.

Existing banks of issue to continue under certain limitations.

13. Every banker claiming under this Act to continue to issue bank notes in England or Wales shall, within one month next after the passing of this Act, give notice in writing to the Commissioners of Stamps and Taxes, at their head office in London, of such claim, and of the place and name and firm at and under which such banker has issued such notes during the twelve weeks next preceding the 27th day of April last; and thereupon the said Commissioners shall ascertain if such banker was, on the 6th day of May, 1844, carrying on the business of a banker, and lawfully issuing his own bank notes in England or Wales, and if it shall so appear then the said Commissioners shall proceed to ascertain the average amount of the bank notes of such banker which were in circulation during the said period of twelve weeks preceding the 27th day of April last, according to the returns made by such banker in pursuance of the Act passed in the 4th and 5th years of the reign of Her present Majesty, intituled "An Act to make further Provision relative to the Returns to be made by Banks of the amount of their Notes in Circulation;" and the said Commissioners, or any two of them, shall certify under their hands to such banker the said average amount, when so ascertained as aforesaid; and it shall be lawful for every such banker to continue to issue his own bank notes after the passing of this Act: Provided nevertheless, that such banker shall not at any time have in circulation upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than the amount so certified.

4 & 5 Vict. c. 50.

Provision for united banks.

14. Provided always, that if it shall be made to appear to the Commissioners of Stamps and Taxes that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said Commissioners), become united within the twelve weeks next preceding such 27th day of April as aforesaid, it shall be lawful for the said Commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify the average amount of the notes of the two or more banks so united as the amount which the united bank shall thereafter be authorised to issue, subject to the regulations of this Act.

Duplicate certificate to be published in the *Gazette*.

Gazette to be evidence.

15. The Commissioners of Stamps and Taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding *London Gazette* in which the same may be conveniently inserted; and the *Gazette* in which such publication shall be made shall be conclusive evidence in all Courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorised to issue and to have in circulation as aforesaid.

In case banks become united, Commissioners to certify the amount

16. In case it shall be made to appear to the Commissioners of Stamps and Taxes, at any time hereafter, that any two or more banks, each such bank consisting of not more than six persons, have, by written contract or agreement (which contract or agreement shall be produced to the said Commissioners), become united subsequently

to the passing of this Act, it shall be lawful to the said Commissioners, upon the application of such united bank, to certify, in manner hereinbefore mentioned, the aggregate of the amounts of bank notes which such separate banks were previously authorised to issue, and so from time to time; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation: Provided always, that it shall not be lawful for any such united bank to issue bank notes at any time after the number of partners therein shall exceed six in the whole. of bank notes which each bank was authorised to issue.

Penalty on banks issuing in excess.

17. If the monthly average circulation of bank notes of any banker, taken in the manner hereinafter directed, shall at any time exceed the amount which such banker is authorised to issue and to have in circulation under the provisions of this Act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorised to issue and to have in circulation as aforesaid.

Issuing banks to render accounts.

18. Every banker in England and Wales who shall issue bank notes shall, on some one day in every week (such day to be fixed by the Commissioners of Stamps and Taxes), transmit to the said Commissioners an account of the amount of the bank notes of such banker in circulation on every day during the week ending on the next preceding Saturday, and also an account of the average amount of the bank notes of such banker in circulation during the same week; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circulation during the said four weeks, and also the amount of bank notes which such banker is authorised to issue under the provisions of this Act; and every such account shall be verified by the signature of such banker or his chief cashier, or, in the case of a company or partnership, by the signature of a managing director or partner or chief cashier of such company or partnership, and shall be made in the form to this Act annexed marked (B.); (*a*) and so much of the said return as states the weekly average amount of the notes of such bank shall be published by the said Commissioners in the next succeeding *London Gazette* in which the same may be conveniently inserted; and if any such banker shall neglect or refuse to render any such account in the form and at the time required by this Act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

(*a*) The schedule is as follows:—

SCHEDULE (B.).

Name and title as set forth in the license	________________	Bank.
Name of the firm	________________	Firm.
Insert head office, or principal place of issue ...	________________	Place.

Mode of ascertaining the average amount of bank notes of each banker in circulation during the first four weeks after 10th October, 1844.

19. For the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation the aggregate of the amount of bank notes of each such banker in circulation on every day of business during the first complete period of four weeks next after the 10th day of October, 1844, such period ending on a Saturday, shall be divided by the number of days of business in such four weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such banker in circulation during such period of four weeks, and so in each successive period of four weeks, and such average is not to exceed the amount certified by the Commissioners of Stamps and Taxes as aforesaid.

Commissioners of Stamps and Taxes empowered to cause the books of bankers containing accounts of their bank notes in circulation to be inspected.

20. All and every the book and books of any banker who shall issue bank notes under the provisions of this Act in which shall be kept, contained, or entered any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation, from time to time, or any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation, from time to time, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation, as directed by this Act, or to test the truth of any such account, shall be open for the inspection and examination, at all seasonable times, of any officer of stamp duties authorised in that behalf by writing, signed by the Commissioners of Stamps and Taxes or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid; and if any banker or other person keeping any such book or having the custody or possession thereof, or power to produce the same, shall, upon demand made by any such officer, showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection or examination, or to permit him to inspect and

Penalty for refusing to allow such inspection.

An Account pursuant to the Act 7 & 8 Vict. c. 32, of the notes of the said bank in circulation during the week ending Saturday, the day of , 18 .

Monday...	
Tuesday...	
Wednesday	
Thursday	
Friday	
Saturday	
	(6)
Average of the week	

[*To be annexed to this account at the end of each period of four weeks.*]

Amount of notes authorised by law ... ... £
Average amount in circulation during the four weeks ending as above ... ... £

I, being [the banker, chief cashier, managing director, *or* partner of the bank, *as the case may be*], do hereby certify that the above is a true account of the notes of the said bank in circulation during the week above written.

(Signed)

Dated the day of , 18 .

examine the same, or to take copies thereof or extracts therefrom, or of or from any such account, minute, or memorandum as aforesaid kept, contained, or entered therein, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l.*: Provided always, that the said Commissioners shall not exercise the powers aforesaid without the consent of the Treasury.

21. Every banker in England and Wales who is now carrying on or shall hereafter carry on business as such shall on the 1st day of January in each year, or within fifteen days thereafter, make a return to the Commissioners of Stamps and Taxes at their head office in London of his name, residence, and occupation, or in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carry on the business of banking, and of every place where such business is carried on; and if any such banker, company, or partnership shall omit or refuse to make such return within fifteen days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company, or partnership so offending shall forfeit and pay the sum of 50*l.*; and the said Commissioners of Stamps and Taxes shall on or before the 1st day of March in every year publish in some newspaper circulating within each town or county respectively a copy of the return so made by every banker, company, or partnership carrying on the business of bankers within such town or county respectively, as the case may be.

All bankers to return names once a year to the Stamp Office.

22. Every banker who shall be liable by law to take out a license from the Commissioners of Stamps and Taxes to authorise the issuing of notes or bills shall take out a separate and distinct license for every town or place at which he shall, by himself or his agent, issue any notes or bills requiring such license to authorise the issuing thereof, any thing in any former Act contained to the contrary thereof notwithstanding: Provided always, that no banker who on or before the 6th day of May, 1844, had taken out four such licenses, which on the said last-mentioned day were respectively in force, for the issuing of any such notes or bills at more than four separate towns or places, shall at any time hereafter be required to take out or to have in force at one and the same time more than four such licenses to authorise the issuing of such notes or bills at all or any of the same towns or places specified in such licenses in force on the said 6th day of May, 1844, and at which towns or places respectively such bankers had on or before the said last-mentioned day issued such notes or bills in pursuance of such licenses or any of them respectively.

Bankers to take out a separate license for every place at which they issue notes or bills.
Proviso in favour of bankers who had four such licenses in force on the 6th of May, 1844.

23. The said Governor and Company shall pay and allow to the several bankers named in the schedule hereto marked (C.),(*a*) so

Compensation to certain

(*a*) SCHEDULE (C.).

Banks which have ceased to issue their own bank notes under certain agreements with the Bank of England.

Bank of Liverpool.	**Biddulph, Brothers & Co.**
J. Barned & Co.	**Birmingham Banking Co.**

bankers named in the schedule.

long as such bankers shall be willing to receive the same, a composition at and after the rate of 1*l.* per centum per annum on the average amount of the Bank of England notes issued by such bankers respectively and actually remaining in circulation, to be ascertained as follows; (that is to say,) on some day in the month of April, 1845, to be determined by the said Governor and Company, an account shall be taken of the Bank of England notes delivered to such bankers respectively by the said Governor and Company within three months next preceding, and of such of the said Bank of England notes as shall have been returned to the Bank of England, and the balance shall be deemed to be the amount of the Bank of England notes issued by such bankers respectively and kept in circulation; and a similar account shall be taken at intervals of three calendar months; and the average of the balances ascertained on taking four such accounts shall be deemed to be the average amount of Bank of England notes issued by such bankers respectively and kept in circulation during the year 1845; and on which amount such bankers are respectively to receive the aforesaid composition of one per centum for the year 1845; and similar accounts shall be taken in each succeeding year; but in each year such accounts shall be taken in different months from those in which the accounts of the last preceding year were taken, and on different days of the month, such months and days to be determined by the said Governor and Company; and the amount of the composition payable as aforesaid shall be paid by the said Governor and Company out of their own funds; and in case any difference shall arise between any of such bankers and the Bank of England in respect of the composition payable as aforesaid, the same shall be determined by the Chancellor of the Exchequer for the time being,

Birmingham Town and District Bank.
Birmingham and Midland Banking Co.
Burgess & Son.
Coopers & Purton.
Cuncliffes, Brooks & Co.
Dean, Littlehales & Deane.
Dendy, Comper & Co.
Devon and Cornwall Banking Co.
Grants & Gillman.
Hampshire Banking Co.
James W. R. Hall.
J. M. Head & Co.
Henty, Upperton & Olliver.
Thomas Kinnersly & Sons.
R. J. Lambton & Co.
Liverpool Commercial Banking Co.
Liverpool Union Bank.
Liverpool Borough Bank.
Manchester and Liverpool District Banking Co.
Manchester and Salford Banking Co.
Monmouth and Glamorgan Banking Co.
Moss & Co.
Mangles, Brothers.
Newcastle Commercial Banking Co.
Newcastle-on-Tyne Joint Stock Banking Co.
North of England Joint Stock Banking Co.
Northumberland and Durham District Bank.
Portsmouth and South Hants Bank Co.
T. & R. Raikes & Co.
Robinson and Brodhurst.
Sheffield Union Bank.
John Stoveld.
Sunderland Joint Stock Banking Co.
Tugwell & Co.
Union Bank of Manchester.
Vivian, Kitson & Co.
Watts, Whiteway & Co.
J. & J. C. Wright & Co.
Webb, Holbrook & Spencer.

or by some person to be named by him, and the decision of the Chancellor of the Exchequer, or his nominee, shall be final and conclusive: Provided always, that it shall be lawful for any banker named in the schedule hereto annexed marked (C.)(*a*) to discontinue the receipt of such composition as aforesaid, but no such banker shall by such discontinuance as aforesaid thereby acquire any right or title to issue bank notes.

24. It shall be lawful for the said Governor and Company to agree with every banker who, under the provisions of this Act, shall be entitled to issue bank notes, to allow to such banker a composition at the rate of one per centum per annum on the amount of Bank of England notes which shall be issued and kept in circulation by such banker, as a consideration for his relinquishment of the privilege of issuing his own bank notes; and all the provisions herein contained for ascertaining and determining the amount of composition payable to the several bankers named in the schedule hereto marked (C.),(*a*) shall apply to all such other bankers with whom the said Governor and Company are hereby authorised to agree as aforesaid; provided that the amount of composition payable to such bankers as last aforesaid shall in every case in which an increase of securities in the Issue Department shall have been authorised by any Order in Council be deducted out of the amount payable by the said Governor and Company to the public under the provisions herein contained: Provided always, that the total sum payable to any banker, under the provisions herein contained, by way of composition as aforesaid, in any one year, shall not exceed, in case of the bankers mentioned in the schedule hereto marked (C.),(*a*) one per centum on the several sums set against the names of such bankers respectively in the list and statement delivered to the Commissioners of Stamps as aforesaid, and in the case of other bankers shall not exceed one per centum on the amount of bank notes which such bankers respectively would otherwise be entitled to issue under the provisions herein contained.

Bank of England to be allowed to compound with issuing banks.

Limitation of compositions.

25. *All the compositions payable to the several bankers mentioned in the schedule hereto marked (C.),(a) and such other bankers as shall agree with the said Governor and Company to discontinue the issue of their own bank notes as aforesaid, shall, if not previously determined by the act of such banker as hereinbefore provided, cease and determine on the* 1st *day of August*, 1856, *or on any earlier day on which Parliament may prohibit the issue of bank notes.*(*b*)

Compositions to cease on 1st August, 1856.

26. It shall be lawful for any society or company or any persons in partnership, though exceeding six in number, carrying on the business of banking in London, or within 65 miles thereof, to draw, accept, or indorse bills of exchange, not being payable to bearer on demand, any thing in the hereinbefore recited Act passed in the 4th year of the reign of His said Majesty King William the Fourth, or in any other Act, to the contrary notwithstanding.

Banks within 65 miles of London may accept, &c., bills.

(*a*) See note (*a*), *ante*, p. 627.
(*b*) By 19 Vict. c. 20, s. 25, was repealed, and the right to compound continued.

Bank to enjoy privileges, subject to redemption.

27. The Bank of England shall have and enjoy such exclusive privilege of banking as is given by this Act, upon such terms and conditions, and subject to the termination thereof at such time and in such manner as is by this Act provided and specified; and all and every the powers and authorities, franchises, privileges and advantages, given or recognised by the said recited Act passed in the 4th year of the reign of His Majesty King William the Fourth, as belonging to or enjoyed by the Bank of England, or by any subsequent Act or Acts of Parliament, shall be and the same are hereby declared to be in full force, and continued by this Act, except so far as the same are altered by this Act; subject nevertheless to redemption upon the terms aud conditions following; (that is to say,) at any time upon twelve months' notice, and upon repayment by Parliament to the said Governor and Company or their successors of the sum of 11,015,100*l.*, being the debt now due from the public to the said Governor and Company, without any deduction, discount, or abatement whatsoever, and upon payment to the said Governor and Company and their successors of all arrears of the sum of 100,000*l.* per annum, in the last-mentioned Act mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said Governor and Company and their successors upon all such tallies, Exchequer orders, Exchequer bills or parliamentary funds which the said Governor and Company or their successors shall have remaining in their hands or to be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then, the said exclusive privileges of banking granted by this Act shall cease and determine at the expiration of such notice of twelve months; and any vote or resolution of the House of Commons, signified under the hand of the Speaker of the said House in writing, and delivered at the public office of the said Governor and Company, shall be deemed and adjudged to be a sufficient notice.

Interpretation clause.

28. In this Act the term "Bank of England notes" shall extend and apply to the promissory notes of the Bank of England payable to bearer on demand; and the term "banker" shall extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise, except only the Bank of England; and the word "person" used in this Act shall include corporations; and the singular number in this Act shall include the plural number, and the plural number the singular, except where there is anything in the context repugnant to such construction; and the masculine gender in this Act shall include the feminine, except where there is anything in the context repugnant to such construction.

EXISTING BANKING COMPANIES TO HAVE THE POWER OF SUING AND BEING SUED BY THEIR PUBLIC OFFICER.

(7 & 8 VICT. CAP. 113.)

An Act to regulate Joint Stock Banks in England.

Existing banking companies to have the powers of suing and being sued.

47. Every company of more than six persons established on the 6th day of May, 1844, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session holden in the 7th and 8th years of the reign of Her present Majesty, chapter 113, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defenant on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an Act passed in the 7th year of the reign of Geo. 4, c. 46, intituled "An Act for the better regulating copartnerships of certain bankers in England, and for amending so much of an Act of the 39 & 40 Geo. 3, intituled 'An Act for establishing an agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year 1800,' as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out or delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act. [As re-enacted by the Companies Act, 1862, s. 205.]

RECOVERY AND APPLICATION OF PENALTIES UNDER 7 & 8 VICT. CAP. 32.

(8 & 9 VICT. CAP. 76.)

An Act . . . to amend . . . an Act of the last Session of Parliament for regulating the Issue of Bank Notes in England.

[4th August, 1845.]

Provision for recovery and application of penalties under 7 & 8 Vict. c. 32.

5. All pecuniary penalties imposed by or incurred under the said last-recited Act may be sued or prosecuted for and recovered, for the use of Her Majesty, in the name of Her Majesty's Attorney-General or Solicitor-General, or of any person authorised to sue or prosecute for the same, by writing under the hands of the Commissioners of Stamps and Taxes, or in the name of any officer of stamp duties, by action or information, in such and the same manner as any penalties imposed by any of the laws now in force relating to the duties under

the management of the said Commissioners; and it shall be lawful in all cases for the said Commissioners, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as they shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceedings, or of any part thereof, or on such other terms as such Commissioners shall judge reasonable: provided always, that all pecuniary penalties imposed by or incurred under the said last-recited Act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of Her Majesty, and shall be deemed to be and shall be accounted for as part of Her Majesty's revenue arising from stamp duties, anything in any Act contained, or any law or usage to the contrary, in anywise notwithstanding: provided always, that it shall be lawful for the said Commissioners, at their discretion, to give all or any part of such penalties as rewards to any person or persons who shall have detected the offenders, or given information, which may have led to their prosecution and conviction.

DRAFTS ON BANKERS PAYABLE TO ORDER ON DEMAND.

(16 & 17 VICT. CAP. 59.)

An Act . . . to amend the Laws relating to Stamp Duties, . . . [4th August, 1853.]

Drafts on bankers payable to order on demand sufficient authority for payment, without proof of indorsement.

19. . . . Any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.

COMPOSITION STILL PAYABLE ON DISCONTINUANCE OF BANK NOTE ISSUES.

(19 VICT. CAP. 20.)

An Act to continue certain Compositions payable to Bankers who have ceased to issue Bank Notes. [5th June, 1856.]

Section 25 of the said Act repealed.

1. Section 25 of the Act 7 & 8 Vict. c. 32, shall be repealed.(a)

Compositions continued.

2. All the compositions payable under the said Act, as amended by this Act, to bankers who have discontinued, or who shall agree

(a) This section repealed by 38 & 39 Vict. c. 61, s. 1.

with the said Governor and Company to discontinue, the issue of their own bank notes, shall, if not previously determined by the act of such bankers as by the said Act provided, and unless Parliament shall otherwise provide, continue in force and be payable until Parliament shall prohibit the issue of bank notes as defined by section 28 of the said recited Act, or until the exclusive privileges of the said Governor and Company mentioned in section 27 of the said Act shall be determined in pursuance of such section, or otherwise be determined or altered by authority of Parliament.

ELECTION OF DIRECTORS OF JOINT STOCK BANKS.

(19 & 20 VICT. CAP. 100.)

An Act to amend the Law with respect to the Election of Directors of Joint Stock Banks in England. [29th July, 1856.]

2. In every banking company already established under the provisions of the said recited Act, and whose deed of partnership or settlement contains a provision in accordance with the enactment hereinbefore repealed, the directors retiring at any general meeting shall and may, if duly qualified in other respects, be immediately eligible for re-election, anything in the deed of partnership of such company contained to the contrary notwithstanding. 7 & 8 Vict. c. 113. Provision for existing banking companies established under recited Act.

BANKING COPARTNERSHIP NOT TO EXCEED TEN PERSONS.

(20 & 21 VICT. CAP. 49.)

An Act to amend the Law relating to Banking Companies.

12. . . . Notwithstanding anything contained in an Act passed in the session holden in the 7th and 8th years of the reign of Her present Majesty, chapter 113, and intituled "An Act to regulate joint stock banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business. [As re-enacted by the Companies Act, 1862, s. 205.] Power to form banking copartnerships of ten persons.

FORM OF LICENCES TO JOINT STOCK BANKS.

(24 & 25 VICT. CAP. 91.)

An Act to amend the Laws relating to the Inland Revenue. [6th August, 1861.]

35. Whereas the licenses and certificates granted to bankers, and persons acting as bankers, in Great Britain and Ireland respectively, by or under the authority of the Commissioners of Inland Revenue, are required by law to specify, among other things, the names and Licenses to joint stock banks not required to specify the

names of more than six persons.

places of abode of all persons composing the respective companies or partnerships to whom they are granted: be it enacted, that in any case where a company or copartnership of bankers consists of more than six persons, it shall be sufficient to specify in any such license or certificate the names and places of abode of any six or more of such persons who may be presented to the Commissioners or their officer, or whom they or he may select for the purpose, and to grant the license or certificate to them as and for the whole of the company or copartnership, or otherwise to specify only the name or style of the company or copartnership, and to grant the license or certificate to such company or copartnership in and by the said name or style as the Commissioners or their officer shall think fit; and every such license and certificate respectively shall be as good, valid, and available as if the names and places of abode of all the members of the company or copartnership had been specified therein, and the license had been granted to them, anything in any Act of Parliament to the contrary notwithstanding; but this shall not in any way alter or affect the provisions of any Act of Parliament whereby any banking company or copartnership is required to make any account or return of the names and places of abode of all the members or partners of such company or copartnership, and any other particulars relating thereto.

THE COMPANIES ACT, 1862, SO FAR AS APPLICABLE TO BANKS.

(25 & 26 Vict. Cap. 89.)

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations. [7th August, 1862.]

Short title.

1. This Act may be cited for all purposes as "The Companies Act, 1862."

Prohibition of partnerships exceeding certain number.

4. No company, association, or partnership consisting of more than 10 persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent. . . .

Certain companies to publish statement entered in Schedule.

44. Every limited banking company . . . . shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the Form marked (D.) in the First Schedule hereto,(a) or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place

(a) Form (D.) is as follows:—
The capital of the company is divided into shares of each.
The number of shares issued is .
Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

in the registered office of the company, and in every branch office or place where the business of the company is carried on; and if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding 5*l.* for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. Every member, and every creditor of the company shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding 6*d.*

205. So much of the said Acts(*a*) as is set forth in the second part of the said Third Schedule shall continue in force.

BANKING COPARTNERSHIP SUING AND SUED BY PUBLIC OFFICER.

(27 & 28 VICT. CAP. 32.)

An Act to enable certain Banking Copartnerships which shall discontinue the issue of their own Bank Notes to sue and be sued by their Public Officer. [30th June, 1864.]

1. Every banking copartnership registered and carrying on business under the first recited Act, and entitled to issue their own bank notes under the secondly recited Act, which shall discontinue the issue of such bank notes, and shall afterwards commence and carry on the trade or business of bankers in London, or within 65 miles from London, in such manner as they will then by law be authorised to do, shall have the same powers and privileges of suing and being sued in the name of one of their public officers of such copartnership, as the nominal plaintiff, petitioner, or defendant, on behalf of such copartnership: and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided by the first recited Act with respect to copartnerships carrying on business under the provisions of that Act: Provided that nothing in this Act contained shall empower any copartnership to carry on the trade or business of bankers in London, or within 65 miles therefrom, in any case where by the existing law they are not authorised so to do.

7 Geo. 4, c. 46.
7 & 8 Vict. c. 32.
Banks discontinuing the issue of bank notes empowered to sue and be sued by their public officer.

Act not to empower any bank to carry on business in London.

The liabilities of the company on the first day of January (*or* July) were—
Debts owing to sundry persons by the company:—
On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £
The assets of the company on that day were:—
Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

(*a*) 7 & 8 Vict. c. 113, s. 47, *ante*, p. 631; and 20 & 21 Vict. c. 49, *ante*, p. 633.

SALE AND PURCHASE OF SHARES IN JOINT STOCK BANKING COMPANIES.

(30 Vict. Cap. 29.)

An Act to amend the Law in respect of the Sale and Purchase of Shares in Joint Stock Banking Companies. [17th June, 1867.]

Contracts for sale, &c., of shares to be void unless the numbers by which such shares are distinguished are set forth in contract.

1. All contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any Act of Parliament, Royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanor, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

Registered shareholders may see lists.

2. Joint stock banking companies shall be bound to show their list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

Extent of Act limited.

3. This Act shall not extend to shares or stock in the Bank of England or the Bank of Ireland.

BANK HOLIDAYS.

(34 VICT. CAP. 17.)

An Act to make provision for Bank Holidays, and respecting obligations to make payments and do other acts on such Bank Holidays. [25th May, 1871.]

Bills due on bank holidays to be payable on the following day.

1. The several days in the Schedule to this Act mentioned(*a*) (and which days are in this Act hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in England and Ireland and Scotland respectively, and all bills of exchange and promissory notes which are due and payable on any such bank holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank holiday; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable; and for all the purposes of this Act the day next following a bank holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

Provision as to notice of dishonour and presentation for honour.

2. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank holiday.

As to any payments on bank holidays.

3. No person shall be compellable to make any payment or to do any act upon such bank holidays which he would not be compellable to do or make on Christmas Day or Good Friday; and the obligation to make such payment and do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Appointment of special bank

4. It shall be lawful for Her Majesty, from time to time, as to Her Majesty may seem fit, by proclamation, in the manner in which solemn fasts or days of public thanksgiving may be appointed, to

(*a*) SCHEDULE.

Bank Holidays in England and Ireland.

Easter Monday.
The Monday in Whitsun week.
The first Monday in August.
The 26th day of December, if a week day.

Bank Holidays in Scotland.

New Year's Day.
Christmas Day.
If either of the above days falls on a Sunday the next following Monday shall be a Bank Holiday.
Good Friday.
The first Monday of May.
The first Monday of August.

holidays by royal proclamation. appoint a special day to be observed as a bank holiday, either throughout the United Kingdom or in any part thereof, or in any county, city, borough, or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall, as regards bills of exchange and promissory notes payable in such locality, be deemed to be a bank holiday for all the purposes of this Act.

Day appointed for bank holiday may be altered by Order in Council.

5. It shall be lawful for Her Majesty in like manner, from time to time, when it is made to appear to Her Majesty in Council in any special case that in any year it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, to declare that such day shall not in such year be a bank holiday, and to appoint such other day as to Her Majesty in Council may seem fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Act.(*a*)

Short title.

7. This Act may be cited for all purposes as "The Bank Holidays Act, 1871."

TREASURY AND EXCHEQUER BILLS.

(40 VICT. CAP. 2.)

An Act to provide for the preparation, issue, and payment of Treasury Bills and make further provision respecting Exchequer Bills.

[16th March, 1877.]

Short titles.

1. . . . The Exchequer Bills and Bonds Act, 1866, and this Act may be cited together as the Exchequer and Treasury Bills Acts, 1866 and 1877.

Definitions.

2. In this Act,—

The expression "Comptroller and Auditor-General of the receipt and issue of Her Majesty's Exchequer" includes, in case of the illness or absence of the comptroller, the assistant comptroller and auditor.

The expression "financial year" means the twelve months beginning on the first day of April and ending on the following thirty-first day of March.

The expression "prescribed" means prescribed by regulations made under this Act.

Raising of money by issue of Treasury bills.

3. Where the Treasury have authority under any Act of Parliament (passed either before or after the passing of this Act) to raise money by the issue of Exchequer bills or of Treasury bills, the Treasury may, if they think fit, raise such money or any part thereof by the issue of bills under this Act.

(*a*) The exercise of the powers conferred by sections 4 and 5 will render unnecessary the passing of a special Act of Parliament, as in the case of the public funeral of the Duke of Wellington (16 & 17 Vict. c. 1), and on the occasion of the entry of the Princess Alexandrina of Denmark into London (26 & 27 Vict. c. 2).

4. A bill under this Act (referred to in this Act as a Treasury bill) shall be a bill in the prescribed form, for the payment of the principal sum named therein in the manner and at the date therein mentioned, so that the date be not more than twelve months from the date of the bill.

Form and length of currency of and interest on Treasury bills.

Interest shall be payable in respect of a Treasury bill at such rate and in such manner as the Treasury direct.

5. All money raised by the issue of any Treasury bill shall be paid into the Exchequer.

Payment of proceeds of Treasury bill into Exchequer, and charge of bill on consolidated fund.

The principal money of and interest on any Treasury bill shall be charged on and payable out of the consolidated fund of the United Kingdom, or the growing produce thereof, at the time and in the manner prescribed.

6. Where in any financial year any Exchequer bills or Treasury bills are or are about to be paid off, the Treasury may, during that financial year, for the purpose of paying off, or of replacing the amount expended (otherwise than out of the new sinking fund) in paying off the principal money of such bills, or of any of them, raise a sum not exceeding the amount of such principal money by the issue of Treasury bills or of Exchequer bills, or partly of Treasury bills and partly of Exchequer bills, according as they think most beneficial for the public service.

Power to issue Exchequer bills or Treasury bills in lieu of bills paid off during same financial year.

Where in any financial year any Exchequer bills are paid in for duties the Treasury may during that financial year for the purpose of replacing the principal money of such bills, or any of them, raise a sum not exceeding the amount of such principal money by the issue of Treasury bills or of Exchequer bills, or partly of Treasury bills and partly of Exchequer bills, according as they think most beneficial for the public service.

This section shall apply in the case of Exchequer bills issued before as well as of those issued after the passing of this Act.

7. Sections three and five of the Sinking Fund Act, 1875, which relate to the application of the old and new sinking funds, shall apply to Treasury bills in like manner as if they were Exchequer bills.

Application of 38 & 39 Vict. c. 45, ss. 3, 5, to Treasury bills.

8. With respect to the issue of Treasury bills the following provisions shall have effect:

Mode of issue of Treasury bills.

(1.) Treasury bills shall be issued by the Bank of England under the authority of a warrant from the Treasury, countersigned by the Comptroller and Auditor-General of the receipt and issue of Her Majesty's Exchequer;

(2.) Each Treasury bill shall be for the amount directed by the Treasury;

(3.) *Each Treasury bill shall be signed by the said Comptroller and Auditor-General in his own name.*(*b*)

(*b*) Repealed by 52 Vict. c. 6. By section 5 of that Act, Exchequer bills, bonds, and Treasury bills shall bear the name of one of the Secretaries to the Treasury, and such name may be impressed or affixed by machinery.

Regulations by Treasury as to preparation, issue, and cancellation of and prevention of fraud as to Treasury bills.

9. The Treasury may from time to time make, and when made rescind, alter, and add to, regulations for carrying into effect this Act, and in particular—

(1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of Treasury bills;

(2.) For regulating the issue of a new bill in lieu of one defaced, lost, or destroyed; and

(3.) For preventing, by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to Treasury bills; and

(4.) For the proper discharge to be given upon the payment of a Treasury bill.

Every regulation under this Act shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not, within one month after the then next meeting of Parliament.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

Application to Treasury bills of 24 & 25 Vict. c. 98, ss. 8—11, relating to forgery and other frauds.

10. Sections eight, nine, ten, and eleven of the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery" (which sections relate to the forgery of and other frauds relating to Exchequer bills), shall apply to Treasury bills, and shall have effect as if "Exchequer bill" in those sections included "Treasury bill."

Application of 38 & 39 Vict. c. 45, to interest on and allowance for management of Treasury bills.

12. Where any Act passed before the passing of this Act authorises the raising of money by Exchequer bills, and the interest on such Exchequer bills is in pursuance of the directions of that Act, or of the Sinking Fund Act, 1875, payable out of the permanent annual charge for the National Debt, the interest on Treasury bills issued to raise the said money shall be paid out of the permanent annual charge.

Bank of England may lend on credit of Treasury bills.

13. The Bank of England may lend to Her Majesty, upon the credit of Treasury bills, any sum or sums not exceeding in the whole the principal sums named in such bills.

COLONIAL STOCK.

(40 & 41 Vict. Cap. 59.)

An Act to amend the Law with respect to the Transfer of Stock forming part of the Public Debt of any Colony, and the Stamp Duty on such Transfer. [14th August, 1877.]

Stock certificate to bearer.

7. The registrar, if so authorised by the government of a colony issuing stock to which this Act applies, shall, on application and payment of the fees and stamp duty, if any, chargeable in respect of the certificate, grant to a stockholder a certificate (in this Act

called a stock certificate to bearer) which shall entitle the bearer to the stock therein described, and shall be transferable by delivery.

There shall be attached to such certificate coupons entitling the bearer of or person named in the coupons to the dividends on the stock for a limited period.

Any stock in respect of which a stock certificate to bearer has been so issued shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

A coupon so issued shall be deemed to be a cheque on a banker within the meaning of any law or enactment for the time being in force relating to cheques other than any enactment relating to stamp duties.

Stamp duty on stock certificate to bearer.

8. Where a composition has not been paid in respect of the stamp duty chargeable on the transfer of any stock to which this Act applies, a stock certificate to bearer issued in respect of that stock shall be charged with a stamp duty of two shillings and sixpence for every full sum of one hundred pounds, and also for every fraction less than one hundred pounds, or over and above one hundred pounds or a multiple of one hundred pounds, of the nominal amount of stock described in such certificate.

Renewal of coupons or certificate.

9. On the expiration of the period for which the coupons attached to a stock certificate to bearer have been issued under this Act, the certificate may be exchanged for another certificate with coupons for a further period: Provided, that the certificate issued in exchange, if the stamp duty has not been compounded, shall be duly stamped, but in such case the Commissioners of Inland Revenue shall, on production to them of both certificates duly stamped, and subject to such regulations as they may from time to time make, grant allowance for the stamp on the former certificate.

Conversion into nominal stock of stock in certificate to bearer.

10. On delivery to the registrar of a stock certificate to bearer issued under this Act, and of all unpaid coupons belonging thereto, the registrar shall enter the bearer in the register as proprietor of the stock described in the certificate, and thereupon that stock shall become transferable and the dividends thereon payable as if no stock certificate to bearer had been issued in respect of that stock.

Conversion of stock certificate to bearer into nominal certificate.

11. If the bearer of a stock certificate to bearer issued under this Act insert therein the name, address, and quality of some person, such certificate shall cease to be transferable, and the person so named, or some person deriving title from him by devolution in law, shall alone be recognized by the registrar as entitled to the stock described in the certificate, and shall be entitled to be entered in the register as proprietor of that stock in like manner as if he were the bearer of a stock certificate to bearer, but if deriving his title by devolution in law he shall produce such evidence of his title as the registrar may reasonably require.

Loss of stock certificate to bearer.

13. If any stock certificate to bearer issued under this Act is lost, mislaid, or destroyed, the registrar shall, on such indemnity being given as he may reasonably require, and on payment of the expense of the issue, issue a fresh stock certificate to bearer in the place of the certificate so lost, mislaid, or destroyed.

Stock in certificate to bearer to have incidents of other stock, except as to transfer, &c

14. Stock described in a stock certificate to bearer issued under this Act shall, save as relates to the mode of transfer and payment of dividends, be subject to the same incidents in all respects as if it had continued to be transferable in the register.

Forgery of transfers of stock and of stock certificates, and personation of owners of stock, &c. 33 & 34 Vict. c. 58.

21. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the statute law of England relating to indictable offences by forgery," colonial stock to which this Act applies shall be deemed to be capital stock of a body corporate.

The Forgery Act, 1870, shall apply to a stock certificate and a coupon issued in pursuance of this Act, and to colonial stock to which this Act applies, in like manner as if the same were a stock certificate, coupon, or stock mentioned in that Act.

Stock to which Act applies to be personal estate.

22. Colonial stock to which this Act applies shall be personal estate, and shall not be liable to any foreign attachment by the custom of London or otherwise.

BILLS OF SALE ACT, 1878.

(41 & 42 VICT. CAP. 31.)

An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.

[22nd July, 1878.]

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Commencement.

2. The first day of January, one thousand eight hundred and seventy-nine, is in this Act referred to as the commencement of this Act.

Application of Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January, one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

Interpretation of terms.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following docu-

ments ; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers, or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stocks, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

"Prescribed" means prescribed by rules made under the provisions of this Act.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act. *Application of Act to trade machinery.*

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop ;

1st. Exclusive of the fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers, donkey-engines, and other fixed appurtenances of the said motive-powers ; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a*.) In or incidental to the making any article or part of an article; or

(*b*.) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c*.) In or incidental to the adapting for sale any article.

Certain instruments giving powers of distress to be subject to this Act.

6. Every attornment, instrument, or agreement not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor, as his tenant at a fair and reasonable rent.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any Court, which shall take place or be issued after the commencement of this Act.

Avoidance of unregistered bill of sale in certain cases.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also

as against all sheriffs officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).(*a*)

Avoidance of certain duplicate bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognisance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Mode of registering bills of sale.

10. A bill of sale shall be attested and registered under this Act in the following manner:—

(2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written

(*a*) Section 8 is repealed as to bills of sale to which the Bills of Sale Act, 1882, applies.

on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the Second Schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The registrar.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such

other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar. 36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.

Rectification of register.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement, or otherwise, or as to any other matter, as he thinks fit to direct.

Entry of satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all Courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof, and of the fact and date of registration as shown thereon.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a Master of any division of the High Court of Justice, or before any Commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Fees.

18. There shall be paid and received in common law stamps the following fees, viz.:—

On filing a bill of sale - - - - - - -	2s.
On filing the affidavit of execution of a bill of sale - -	2s.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) - - -	5s.

Collection of fees under 38 & 39 Vict. c. 77, s. 26.

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Order and disposition.

20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be

32 & 33 Vict. c. 71. in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.(*a*)

Rules. 36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77. **21.** Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Time for registration. **22.** When the time for registering a bill of sale expires on a Sunday, or other day on which the the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

17 & 18 Vict. c. 36. 29 & 30 Vict. c. 96. **23.** Except as is herein expressly mentioned with respect to construction and with respect to renewal of registration, nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed(*b*) shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

Extent of Act. **24.** This Act shall not extend to Scotland or to Ireland.

SCHEDULES.

Section 11.

SCHEDULE (A.).

I [*A. B.*] , of , do swear that a bill of sale, bearing date the day of , 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day of , 18 [*insert date of registration*], is still a subsisting security.

Sworn, &c.

Section 12.

SCHEDULE (B.).

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of Instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

(*a*) Section 20 is repealed as to bills of sale to which the Bills of Sale Act, 1882, applies.

(*b*) *i.e.*, Bills of Sale Acts, 1854 and 1856. See Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56).

BANKERS BOOKS EVIDENCE ACT, 1879.

(42 VICT. CAP. 11.)

An Act to amend the Law of Evidence with respect to Bankers' Books.
[23rd May, 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Bankers Books Evidence Act, 1879. Short title.

3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *primâ facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded. Mode of proof of entries in bankers' books.

4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. Proof that book is a banker's book.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any Commissioner or person authorised to take affidavits.

5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct. Verification of copy.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any Commissioner or person authorised to take affidavits.

6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's books the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause. Case in which banker, &c., not compellable to produce book, &c.

7. On the application of any party to a legal proceeding a Court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the Court or judge otherwise directs. Court or judge may order inspection, &c.

8. The costs of any application to a Court or judge under or for the purposes of this Act, and the costs of anything done or to be done Costs.

under an order of a Court or judge made under or for the purposes of this Act, shall be in the discretion of the Court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

Interpretation of "bank," "banker," and "bankers' books."

9. In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any Post Office Savings Bank.(a)

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a Post Office Savings Bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the Secretaries of the Post Office.

Expressions in this Act relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

Interpretation of "legal proceeding," "court." "judge."

10. In this Act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given and includes an arbitration;

The expression "the court" means the court, judge, arbitrator, persons, or person before whom a legal proceeding is held or taken;

The expression "a judge" means with respect to England a judge of the High Court of Justice, and with respect to Scotland a lord ordinary of the Outer House of the Court of Session, and with respect to Ireland a judge of the High Court of Justice in Ireland;

The judge of a county court may with respect to any action in such Court exercise the powers of a judge under this Act.

Computation of time.

11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.

(a) This section is extended by 45 & 46 Vict. c. 72, s. 11 (2).

COMPANIES ACT, 1879.

(42 & 43 VICT. CAP. 76.)

An Act to amend the Law with respect to the Liability of Members of Banking . . . . Companies; . . . .

[15th August, 1879.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Companies Act, 1879. Short title.

2. This Act shall not apply to the Bank of England. Act not to apply to Bank of England.

3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877. Act to be construed with 25 & 26 Vict. c, 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act. Registration anew of company. 25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c 76. 25 & 26 Vict. c. 89.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.

5. An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares. Reserve of capital of company, how provided, 26 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

6. A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liabi- Liability of bank of issue

unlimited in respect of notes.

lity in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Audit of accounts of banking companies.

7. (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least. Signature of balance sheet.

9. On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company. Application of 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26. 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, and 42 & 43 Vict. c. 76.

10. A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, Royal charter, deed of settlement, contract of copartnery, cost book, regulations, letters patent, or other instrument constituting or regulating the company. Privileges of Act available, notwithstanding constitution of company.

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43 & 44 VICT. CAP. 20.

An Act to grant and alter certain Duties of Inland Revenue and to amend the Law in relation to certain other duties.

57. It shall not be obligatory on the Commissioners to publish in any newspaper any return made to them by any banking company which is duly registered under the provisions of the several Acts specified in the Third Schedule, or any of them.

BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

(45 & 46 VICT. CAP. 43.)

An Act to amend the Bills of Sale Act, 1878.

[18th August, 1882.]

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882. Short title.

2. This Act shall come into operation on the 1st day of November, 1882, which date is hereinafter referred to as the commencement of this Act. Commencement of Act.

Construction of Act. 41 & 42 Vict. c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires, shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

Bill of sale to have schedule of property attached thereto.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale not to affect after-acquired property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as to certain things.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say,)

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale with power to seize except in certain events to be void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2.) If the grantor shall become a bankrupt, or suffer the said goods, or any of them, to be distrained for rent, rates, or taxes;

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein. Bill of sale to be void unless attested and registered.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.(*a*) Form of bill of sale.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.(*b*) Attestation.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same, or of the person against whom the process is issued, to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar. Local registration of contents of bills of sale. 32 & 33 Vict. c. 71, s. 60.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of

(*a*) See, as to this section, 53 & 54 Vict. c. 53, and 54 & 55 Vict. c. 35, and *ante*, pp. 557, 563, 564.

(*b*) See *ante*, p. 570, note (*a*).

the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

Bill of sale under 30*l.* to be void.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Chattels not to be removed or sold.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale not to protect chattels against poor and parochial rates.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of part of Bills of Sale Act, 1878.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Inspection of registered bills of sale.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures to which Act not to apply.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of Act.

18. This Act shall not extend to Scotland or Ireland.

SCHEDULE.

Form of Bill of Sale.

This Indenture, made the day of , between *A. B.*, of , of the one part, and *C. D.*, of , of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.*

by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he, the said *A. B.*, doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me, *E. F.* [*add witness' name, address, and description*].

BILLS OF EXCHANGE ACT, 1882.

(45 & 46 VICT. CAP. 61.)

An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes. [18th August, 1882.]

PART I.—PRELIMINARY.

1. This Act may be cited as the Bills of Exchange Act, 1882. Short title.

2. In this Act, unless the context otherwise requires,— Interpretation of terms.

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter claim and set off.

"Banker" includes a body of persons whether incorporated or not who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

Part II.—Bills of Exchange.

Form and Interpretation.

Bill of Exchange defined.

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrnment which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a.*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b.*) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(*a.*) That it is not dated;

(*b.*) That it does not specify the value given, or that any value has been given therefor;

(*c.*) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4. (1.) An inland bill is a bill which is or on the face of it purports to be (*a.*) both drawn and payable within the British Islands, or (*b.*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. (1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee.

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. (1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a.*) With interest.

(*b.*) By stated instalments.

(*c.*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d.*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable on demand.

10. (1.) A bill is payable on demand—

(*a.*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b.*) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is

inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows:

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(*a.*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day.

(*b.*) When the last day of grace is a Bank Holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

34 & 35 Vict. c. 17.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to runs from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4.) The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1.) Negativing or limiting his own liability to the holder:

(2.) Waiving as regards himself some or all of the holder's duties.

Definition and requi-

17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely : sites of acceptance.

(*a.*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b.*) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance.

18. A bill may be accepted—

(1.) Before it has been signed by the drawer, or while otherwise incomplete.

(2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances.

19. (1.) An acceptance is either (*a.*) general or (*b.*) qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular, an acceptance is qualified which is—

(*a.*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

(*b.*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :

(*c.*) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere.

(*d.*) Qualified as to time :

(*e.*) The acceptance of some one or more of the drawees, but not of all.

Inchoate instruments.

20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery.

21. (1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a.*) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(*b.*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.

Capacity of parties.

22. (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. Procuration signatures.

26. (1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. Person signing as agent or in representative capacity.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill.

27. (1.) Valuable consideration for a bill may be constituted by— Value and holder for value.

(*a.*) Any consideration sufficient to support a simple contract;

(*b.*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

28. (1.) An accommodation party to a bill is a person who has signed a bill as a drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Accommodation bill or party.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

29. (1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely— Holder in due course.

(*a.*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(*b.*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that

holder in due course as regards the acceptor and all parties to the bill prior to the holder.

Presumption of value and good faith.

30. (1.) Every party whose signature appears on a bill is primâ facie deemed to have become a party thereto for value.

(2.) Every holder of a bill is primâ facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of a bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

Negotiation of bill.

31. (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely—

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of a bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to endorse for the others.

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Conditional indorsement.

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer

Indorsement in blank and special indorsement.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank endorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35. (1.) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof: as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

Restrictive indorsement.

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities as the first indorsee under the restrictive indorsement.

36. (1.) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a.*) restrictively indorsed, or (*b.*) discharged by payment or otherwise.

Negotiation of overdue or dishonoured bill.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is primâ facie deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotitiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Negotiation of bill to party already liable thereon.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows:
(1.) He may sue on the bill in his own name:
(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:
(3.) Where his title is defective (*a.*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b.*) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder.

When presentment for acceptance is necessary.

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary, in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. (1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance, and excuses for non-presentment.

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:
(*a.*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:
(*b.*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:
(*c.*) Where the drawee is dead, presentment may be made to his personal representative:
(*d.*) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

(e.) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(a.) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(c.) Where although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. (1.) A bill is dishonoured by non-acceptance—

(a.) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(b.) When presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment.

45. Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer

liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4.) A bill is presented at the proper place :—

(*a.*) Where a place of payment is specified in the bill and the bill is there presented.

(*b.*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c.*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(*d.*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with,—

(*a.*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b.*) Where the drawee is a fictitious person.

(*c.*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d.*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
(*e.*) By waiver of presentment, express or implied.

Dishonour by non-payment.

47. (1.) A bill is dishonoured by non-payment (*a.*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b.*) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—
(1.) Where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission..
(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—
(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
(6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
(7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a.*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b.*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstanees beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

(*a.*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:

(*b.*) By waiver express or implied. Notice of dishonour may be

waived before the time of giving notice has arrived, or after the omission to give due notice :

(*c.*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(*d.*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

51. (1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve recourse against the drawer or indorser. Noting or protest of bill.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured : Provided that—

(*a.*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day :

(*b.*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested:

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52. (1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Funds in hands of drawee.

53. (1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2.) In Scotland where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance:

(2.) Is precluded from denying to a holder in due course:

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

55. (1.) The drawer of a bill by drawing it— Liability of drawer or indorser.

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b.*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b.*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(*c.*) Is precluded from denying to his immediate or subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course. Stranger signing bill liable as indorser.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows: Measure of damages against parties to dishonoured bill.

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a.*) The amount of the bill:

(*b.*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

(*c.*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58. (1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery." Transferor by delivery and transferee.

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

Payment in due course.

59. (1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged ; but

(*a.*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(*b.*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

62. (1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity ; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or

without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

64. (1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. Alteration of bill.

Provided that,—

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

65. (1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. Acceptance for honour supra protest.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour supra protest in order to be valid must—

(*a.*) Be written on the bill, and indicate that it is an acceptance for honour:

(*b.*) Be signed by the acceptor for honour.

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66. (1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. Liability of acceptor for honour.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67. (1.) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. Presentment to acceptor for honour.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

Payment for honour *supra* protest.

68. (1.) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or

judge against the claims of any other person upon the instrument in question.

Bill in a Set.

71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill. Rules as to sets.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows: Rules where laws conflict.

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made.

Provided that—

(*a.*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(*b.*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of the United Kingdom.

(3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.—CHEQUES ON A BANKER.

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Act—

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1.) Countermand of payment:

(2.) Notice of the customer's death.

Crossed Cheques.

General and special crossings defined.

76. (1.) Where a cheque bears across its face an addition of—

(*a.*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable;" or

(*b.*) Two parallel transverse lines simply, either with or without the words "not negotiable;"

that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue.

77. (1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to banker for collection, he may cross it specially to himself.

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheques.

79. (1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title, or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Part IV.—Promissory Notes.

Promissory note defined.

83. (1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands, is an inland note. Any other note is a foreign note.

Delivery necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

85. (1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2.) Where a note runs, "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.

Note payable on demand.

86. (1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment.

87. (1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an

indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

88. The maker of a promissory note by making it— Liability of maker.

(1.) Engages that he will pay it according to its tenor:

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

89. (1.) Subject to the provisions in this Part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. Application of Part II. to notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(*a.*) Presentment for acceptance;

(*b.*) Acceptance;

(*c.*) Acceptance supra protest;

(*d.*) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.—SUPPLEMENTARY.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not. Good faith.

91. (1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. Signature

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time non-business days are excluded. Computation of time.

"Non-business days," for the purposes of this Act, mean—

(*a.*) Sunday, Good Friday, Christmas Day:

(*b.*) A Bank Holiday under the Bank Holidays Act, 1871, or Acts amending it:

(*c.*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of When noting equivalent to protest.

the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule I. to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repeal.

96. The enactments mentioned in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

97. (1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques shall continue to apply thereto, notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

33 & 34 Vict. c. 97.

(*a.*) The provisions of the Stamp Act, 1870,(*a*) or Acts amending it, or any law or enactment for the time being in force relating to the revenue:

25 & 26 Vict. c. 89.

(*b.*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies:

(*c.*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

(*d.*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Saving of summary diligence in Scotland.

98. Nothing in this Act, or in any repeal effected thereby, shall extend or restrict, or in any way alter or affect, the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parol evidence allowed in certain

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole

(*a*) Repealed. See Stamp Act, 1891 (54 & 54 Vict. c. 39).

evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution, as the Court or judge before whom the cause is depending may require. Judicial proceedings in Scotland.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

SCHEDULES.

FIRST SCHEDULE.

Form of protest which may be used when the services of a notary cannot be obtained. Section 94.

KNOW all men that I, *A. B.* [householder], of , in the county of , in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the day of , 188 , at , demand payment [*or* acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any], wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

(Signed) *A. B.*

G. H.
J. K. } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be under-written.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and Extent of Repeal.
9 Will. 3, c. 17 ...	An Act for the better payment of inland bills of exchange.
3 & 4 Anne, c. 8 ...	An Act for giving like remedy upon promissory notes as is now used upon bills of exchange, and for the better payment of inland bills of exchange.
17 Geo. 3, c. 30 ...	An Act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3, c. 42	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3, c. 88 ...	An Act to restrain the negotiation of promissory notes and inland bills of exchange under a limited sum in England.
1 & 2 Geo. 4, c. 78	An Act to regulate acceptances of bills of exchange.

Session and Chapter.	Title of Act and Extent of Repeal.
7 & 8 Geo. 4, c. 15	An Act for declaring the law in relation to bills of exchange and promissory notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4, c. 24 ...	An Act to repeal certain Acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland, in part; that is to say, Sections two, four, seven, eight, nine ten, eleven.
2 & 3 Will. 4, c. 98	An Act for regulating the protesting for non-payment of bills of exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4, c. 58	An Act for declaring the law as to the day on which it is requisite to present for payment to acceptor, or acceptors supra protest for honour, or to the referee or referees, in case of need, bills of exchange which have been dishonoured.
8 & 9 Vict. c. 37, in part.	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97, in part.	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
23 & 24 Vict. c. 111, in part.	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c. 74	An Act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13	The Bills of Exchange Act, 1878.

Enactment Repealed as to Scotland.

19 & 20 Vict. c. 60, in part.	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

CONVERSION OF INDIA STOCK ACT, 1887.

(50 VICT. CAP. 11.)

An Act for giving facilities for the conversion of India Four per Cent. Stock into India Three and a half per Cent. Stock, and for other purposes relating thereto.

[23rd May, 1887.]

Whereas, in accordance with the conditions under which India four per cent. stock has been issued, the Secretary of State in Council of India has power to give notice of his intention to redeem that stock at par on the tenth day of October, one thousand eight hundred and eighty-eight.

And whereas the said Secretary of State has offered to holders of India four per cent. stock, in exchange for such stock and in lieu of repayment in cash, a like amount of India three and a half per cent. stock, bearing interest from the fifth day of July, one thousand eight hundred and eighty-seven, together with the payment on the sixth day of July, one thousand eight hundred and eighty-seven, of one pound twelve shillings and sixpence per cent. on the amount of stock exchanged, to be treated as interest so as to make up a sum equal to interest thereon at the rate of four pounds per cent. per annum to the tenth day of October, one thousand eight hundred and eighty-eight.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Conversion of India Stock Act, 1887.

Power of holders, trustees, &c., in relation to exchange of India four per cent. stock for India three and a half per cent. stock.

2. Where any India four per cent. stock is standing in the name of any person, such person (in this section referred to as the holder) may, with the consent of the Secretary of State, exchange such stock or any part thereof for India three and a half per cent. stock: Provided that when the consent of any person other than the holder is required for a change of investment by such holder, such consent shall be required for the purpose of an exchange in pursuance of this section; and when the holder is a trustee and has not power under the terms of his trust to vary investments, the consent either of every person interested in the stock, or when any such person is an infant or a person of unsound mind the consent of his guardian or guardians or of the committee of his estate or curator bonis (as the case may be), or the consent of a judge of the High Court of Justice in England and Ireland, or in Scotland of a judge of the Court of Session, shall be required for the purpose of an exchange in pursuance of this section; and when the holder in a joint account is an infant, or a person of unsound mind, or is under any other disability, or is beyond the seas, the other holders or holder may, with the consent of a judge of the High Court of Justice in England and Ireland, or in Scotland of a judge of the Court of Session, exchange in pursuance of this section such stock or any part thereof for India three and a half per cent. stock; and such consents having been obtained, holders shall not be liable for any loss resulting from any exchange

in pursuance of this section. Subject to rules of Court, any jurisdiction given by this Act to a judge of the High Court of Justice shall be exercised by a judge of the Chancery Division.

The bank shall not be bound to inquire as to whether any such consent as aforesaid is given to any exchange, nor be responsible in the event of any consent not having been given.

Powers of investment.

3. A power, whether subject or not to any restrictions or conditions, to invest in India four per cent. stock shall extend to authorise an investment, subject to the same conditions and restrictions (if any), in India three and a half per cent. stock.

Stock taken in exchange to be held subject to same provisions as former stock.

4. Where stock is exchanged under this Act, the stock taken in exchange, and the interest thereon, shall be subject to the same trusts, charges, rights, distringas, and restraints as affect the stock cancelled on the exchange, and the interest thereon respectively.

Powers of attorney for sale and transfer of India four per cent. stock to apply to India three and a half per cent. stock.

5. Every power of attorney in force for the sale and transfer of any India four per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to, to receive and give receipts for the money which will become payable for the redemption of any principal sum of such India four per cent. stock, and to sell and transfer any India three and a half per cent. stock that may be accepted in exchange for such India four per cent. stock, or into which such India four per cent. stock may be converted, and to receive the consideration money and give receipts for the same.

Powers of attorney for receipt of dividends on India four per cent. stock to apply to India three and a half per cent. stock.

6. Every power of attorney in force for the receipt of dividends on any India four per cent. stock shall, unless it be legally revoked or become void, remain in force for the purpose of enabling the attorney or attorneys therein named or referred to, to receive the dividends to accrue on India three and a half per cent. stock, and also to receive the said payment of one pound twelve shillings and sixpence per cent. on India four per cent. stock which will become payable on the sixth day of July, one thousand eight hundred and eighty-seven.

Requests for post dividend warrants in respect of India four per cent. stock to apply to India three and a half per cent. stock.

7. Every request for the transmission of dividend warrants by post relating to India four per cent. stock in force at the time of the passing of this Act, or which may hereafter be made in pursuance of the Act of the thirty-fourth and thirty-fifth Victoria, chapter twenty-nine, shall, unless it be legally revoked or become void, extend and apply to India three and a half per cent. stock as if the stock mentioned in such request were therein described as India three and a half per cent. stock.

Power to exchange stock up to 1,000*l.* value standing in name of infant or of person of unsound mind.

8. Where the holder of India four per cent. stock to the amount of one thousand pounds nominal value or less is an infant or a person of unsound mind, and no steps are taken on or before the first day of July, one thousand eight hundred and eighty-seven, for the exchange of such stock for India three and a half per cent. stock, such exchange shall be made, notwithstanding that no consent may have been given by his guardian or guardians, or by the committee of his estate or curator bonis (as the case may be). For the purpose of effecting such exchange the bank shall, by the direction of the Secretary of State, cancel in their books as from the first day of

July, one thousand eight hundred and eighty-seven, the amount to be exchanged of India four per cent. stock standing in the name of any such holder, and shall inscribe in their books in the name of such holder the amount of India three and a half per cent. stock to be given in exchange for the India four per cent. stock so cancelled. The Secretary of State may provide as to the evidence of title, unsoundness of mind, or other matter which the bank may require. A direction from the Secretary of State shall be a sufficient authority for anything done by the bank in pursuance of such direction for the purposes of this section.

9. In this Act,— Definitions.

"The Secretary of State" means the Secretary of State in Council of India.

"The Bank" means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, as the case may be, and includes their successors.

"Person" includes a body of persons, corporate or unincorporate.

COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

(53 & 54 VICT. CAP. 62.)

An Act to give further Powers to Companies with respect to certain Instruments under which they may be constituted or regulated.

[18th August, 1890.]

1. (1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effec until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company. Power for company to alter objects or form of constitution subject to confirmation by Court.

(2.) Before confirming any such alteration the Court must be satisfied—

(*a.*) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(*b.*) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court.

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

(4.) The Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

(*a.*) To carry on its business more economically or more efficiently; or

(*b.*) To attain its main purpose by new or improved means; or

(*c.*) To enlarge or change the local area of its operations; or

(*d.*) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e.*) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.

2. (1.) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the registrar of joint stock companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

3. (1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890. Short title and construction.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract or co-partnery or other instrument constituting or regulating the company and not being an Act of Parliament, a Royal charter, or letters patent.

THE COMPANIES (WINDING UP) ACT, 1890.

(53 & 54 VICT. CAP. 63.)

An Act to amend the Law relating to the Winding up of Companies in England and Wales. [18th August, 1890.]

1. (1.) The courts having jurisdiction to wind-up companies in England and Wales shall be the High Court, the Chancery Courts of the counties palatine of Lancaster and Durham, the County Courts, and the Stannaries Court. Jurisdiction to wind up companies.

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind-up the company or to continue the winding up of the company under the supervision of the court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the Palatine Courts aforesaid, either to the High Court or to the Palatine Court having jurisdiction.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situate within the jurisdiction of a County Court having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the Court shall be presented to that County Court.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the Court shall be presented to the Stannaries Court whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5.) The Lord Chancellor may by order exclude a County Court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other County Court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide that a County Court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6.) Every Court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the

powers of the High Court, and every prescribed officer of the Court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

Conduct of winding-up business in High Court. 36 & 37 Vict. c. 66.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Transfer of proceedings.

3. (1.) The winding up of a company or any proceedings therein may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or as regards any case within the jurisdiction of any other Court, by the judge of that Court.

(3.) If any question arises in any winding up proceeding in a County Court or in the Stannaries Court which all the parties to the proceeding, or which one of them and the judge of the Court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Provisions as to liquidator.

4. (1.) On an order being made by the Court for winding up a company the officer hereinafter mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2.) The said officer shall be the official receiver, if any, attached to the Court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

(3.) When a person other than the official receiver is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he

has notified his appointment to the registrar of joint stock companies and given security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

(4.) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5.) The official receiver may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.

(6.) Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company the official receiver may be so appointed.

Power to appoint special manager.

5. (1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2.) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration as may be fixed by the Court.

Meeting of creditors.

6. (1.) When the Court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(*a.*) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and

(*b.*) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed.

The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the Court shall decide the difference and make such order thereon as the Court may think fit.

(2.) The provisions of the First Schedule to this Act, shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

(3.) In case a liquidator is not appointed by the Court the official receiver shall be the liquidator of the company.

Statement of company's affairs.

7. (1.) Where the court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form,

verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occapations of the creditors of the company, the securieties held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2.) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the Court, may require to submit, and verify the same.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint.

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5.) If any person, without reasonable excuse, makes default iu complying with the reqnirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report on winding up and proceedings thereupon.

8. (1.) Where the Court has made an order for winding up a company, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court—

(a.) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities ; and

(b.) If the company has failed, as to the causes of the failure ; and

(c.) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2.) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3.) The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4.) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(5.) The liquidator where the official receiver is not the liquidator and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.

(6.) The Court may put such questions to the person examined as to the Court may seem expedient.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The person examined shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8.) The Court may, if it thinks fit, adjourn the examination from time to time.

(9.) A public examination under this section may, if the Court so directs, and subject to general rules, be held before any judge of County Courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine Court, before a registrar of that Court, and the powers of the Court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

9. (1.) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court. Committee of inspection.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the com-

mittee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors, of which seven days' notice has been given stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power of Court to assess damages against delinquent directors, officers, and promoters.

10. (1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just.

(2.) The provisions of this section shall apply in the winding up of any company under the Companies Acts whether the same

is being wound up by or subject to the supervision of the Court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

11. (1.) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account. Payment of money into Bank of England.

(2.) Every liquidator of a company which is being wound up by order of the Court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3.) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5.) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

(6.) No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

12. (1.) The liquidator of a company which is being wound up by the Court may, with the sanction either of the Court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine or section one hundred and sixty of the Companies Act, 1862. Powers of liquidator. 25 & 26 Vict. c. 89.

(2.) The liquidator of any such company may, without the sanction of the Court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five of the Companies Act, 1862.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the Court, and any

creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4.) The liquidator of a company which is being wound up by order of the Court may, with the sanction either of the Court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Delegation to liquidator of certain powers of Court.

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections ninety-one, ninety-eight, ninety-nine, one hundred, one hundred and two, and one hundred and seven of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court.

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Power for official receiver to apply as to voluntary winding up.

14. Where a company is being wound up voluntarily or subject to the supervision of the Court, the official receiver attached to the Court having jurisdiction to wind up the company may present a petition that the company be wound up by the Court, and thereupon if the court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court.

Information as to pending liquidations.

15. (1.) If the winding up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(2.) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which he default continues.

(3.) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate

of receipt for the moneys so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(4.) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised and by the like authority as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(5.) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

(6.) This section shall apply whether the winding up of the company has commenced before or after the commencement of this Act.

Investment of surplus funds on general account.

16. (1.) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2.) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

Separate accounts of particular estates.

17. (1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade

shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested forms part.

Interests on balances above two thousand pounds.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

Certain receipts and fees to be applied in aid of expenditure.

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Audit of liquidator's accounts.

20. (1.) Every liquidator of a company which is being wound up by order of the Court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments of such liquidator.

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4.) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

Books to be kept by liquidator.

21. Every liquidator of a company which is being wound up by order of the Court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent, inspect any such books.

Release of liquidators.

22. (1.) When the liquidator of a company which is being wound up by order of the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of

the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject, nevertheless, to an appeal to the High Court.

(2.) Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Discretionary powers of liquidator and control thereof.

23. (1.) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the Court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting, shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3.) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against liquidator.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the Court, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained up, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators.

25. (1.) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully

performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

(2.) The Board may at any time require any liquidator of a company which is being wound up by order of the Court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit, apply to the Court to examine on oath the liquidator or any other person concerning the winding up.

(3.) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court.

General rules and fees.

26. (1.) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that Court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Officers and remuneration.

27. (1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

Annual accounts of receipts and expenditure in respect of winding up proceedings. 38 & 39 Vict. c. 77.

28. (1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns by officers.

29. (1.) The officers of the Court acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Proceedings of Board of Trade.

30. (1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

Application of Act.

31. (1.) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the Court if the order is to continue a winding up under the supervision of the Court.

(3.) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

Interpretation of terms.

32. (1.) In this Act, unless the context otherwise requires,—

"The Companies Acts" means the Companies Act, 1862, and the Acts amending the same.

"General rules" means general rules made under this Act, and includes forms.

"Prescribed" means prescribed by general rules.

"Stannaries Court" means the Court of the Vice-Warden of the Stannaries.

25 & 26 Vict. c. 89. (2.) In Part IV. of the Companies Act, 1862, and in this Act the expression "the Court," when used in relation to a company shall, unless the contrary intention appears, mean the Court having jurisdiction under this Act to wind up the company.

(3.) For the purposes of this Act the expression "registered office of a company" shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862, is to be deemed the registered office of the company for the purpose of the winding up thereof.

Repeal. **33.** The enactments memtioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule.

Commencement of Act. **34.** This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-one.

Short title. **35.** (1.) This Act may be cited as the Companies (Winding up) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1890.

SCHEDULES.

Section 6.

FIRST SCHEDULE.

MEETINGS OF CREDITORS AND CONTRIBUTORIES.

(1.) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding up order, or within such further time as the Court may approve, unless a special manager has been appointed, in which case such meetings shall be held within one month from the date of such order, or within such further time as aforesaid.

(2.) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3.) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4.) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

(5.) The official receiver, or some person nominated by him, shall be the chairman at the meetings.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(8.) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(10.) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12.) A creditor or a contributory may vote either in person or by proxy.

(13.) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

(16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

(*a.*) For or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and

(*b.*) On all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(17.) A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

(18.) Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

(19.) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22.) If within half-an-hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

SECOND SCHEDULE.

Enactments Repealed as to England and Wales.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89	The Companies Act, 1862.	Section eighty-one. In section ninety-two the words " The court shall determine whether any and what security is to be given by any official liquidator on his appointment." Section ninety-seven. Section one hundred and sixty-five.
30 & 31 Vict. c. 131	The Companies Act, 1867.	Sections forty-one to forty-six.

DIRECTORS LIABILITY ACT, 1890.

(53 & 54 VICT. CAP. 64.)

An Act to amend the Law relating to the Liability of Directors and others for Statements in Prospectuses and other Documents soliciting applications for Shares or Debentures. [18th August, 1890.]

1. This Act may be cited as the Directors Liability Act, 1890. Short title.

2. This Act shall be construed as one with the Companies Acts, 1862 to 1890. Construction.

3. (1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved— Liability for statements in prospectus.

(*a.*) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true; and

(*b.*) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c.*) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity where name of person has been improperly inserted as a director.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Contribution from co-directors, &c.

5. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

STAMP ACT, 1891.

(54 & 55 VICT. CAP. 39.)

An Act to consolidate the Enactments granting and relating to the Stamp Duties upon Instruments and certain other Enactments relating to Stamp Duties. [21st July, 1891.]

1. From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the several instruments specified in the First Schedule to this Act shall be the several duties in the said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force. **Charge of duties in schedule.**

2. All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained, and except where express provision is made to the contrary, are to be denoted by impressed stamps only. **All duties to be paid according to regulations of Act.**

3. (2.) If more than one instrument be written upon the same piece of material, every one of the instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

6. (1.) Where an instrument is chargeable with ad valorem duty in respect of— **Mode of calculating ad valorem duty in certain cases.**

(*a.*) Any money in any foreign or colonial currency; or

(*b.*) Any stock or marketable security;

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in British currency according to the current rate of exchange, or of the stock or security according to the average price thereof.

(2.) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject-matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

7. Any stamp duties of an amount not exceeding two shillings and sixpence upon instruments which are permitted by law to be denoted by adhesive stamps not appropriated by any word or words on the face of them to any particular description of instrument, and any postage duties of the like amount, may be denoted by the same adhesive stamps. **Certain adhesive stamps to be applicable to instruments and postal purposes.**

8. (1.) An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp, unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time. **General direction as to the cancellation of adhesive stamps.**

(2.) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner aforesaid.

(3.) Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall incur a fine of ten pounds.

Terms upon which instruments not duly stamped may be received in evidence.

14. (1.) Upon the production of an instrument chargeable with any duty as evidence in any Court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the Court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

(2.) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same, and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the Commissioners may appoint the money received by him for the duty and penalty.

(3.) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

(4.) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

Duty may be denoted by adhesive stamp.

22. The duty of sixpence upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

Certain mortgages of stock to be chargeable as agreements.

23. (1.) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(2.) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(3.) A release or discharge of any such instrument shall not be chargeable with any ad valorem duty.

29. For the purposes of this Act the expression "banker" means any person carrying on the business of banking in the United Kingdom, and the expression "bank note" includes— Meaning of banker and bank note.

(*a.*) Any bill of exchange or promissory note issued by any banker, other than the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand; and

(*b.*) Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not and in whatever form, and by whomsoever the bill or note is drawn or made.

30. A bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of the re-issuing. Bank notes may be re-issued.

31. (1.) If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or permits to be issued, any bank note not being duly stamped, he shall incur a fine of fifty pounds. Penalties for issuing or receiving an unstamped bank note.

(2.) If any person receives or takes in payment or as a security any bank note issued unstamped contrary to law, knowing the same to have been so issued, he shall incur a fine of twenty pounds.

32. For the purposes of this Act the expression "bill of exchange" includes draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the expression "bill of exchange payable on demand" includes— Meaning of "bill of exchange."

(*a.*) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and

(*b.*) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.

33. (1.) For the purposes of this Act the expression "promissory note" includes any document or writing (except a bank note) containing a promise to pay any sum of money. Meaning of "promissory note."

(2.) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon

any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

Provisions for use of adhesive stamps on bills and notes.

34. (1.) The fixed duty of one penny on a bill of exchange payable on demand or at sight or on presentation may be denoted by an adhesive stamp, which, where the bill is drawn in the United Kingdom, is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

(2.) The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom are to be denoted by adhesive stamps.

Provisions as to stamping foreign bills and notes.

35. (1.) Every person into whose hands any bill of exchange or promissory note drawn or made out of the United Kingdom, comes in the United Kingdom before iti s stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto.

(2.) Provided as follows:

(*a.*) If at the time when any such bill or note comes into the hands of any bonâ fide holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person;

(*b.*) If at the time when any such bill or note comes into the hands of any bonâ fide holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.

(3.) But neither of the foregoing provisoes is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

As to bills and notes purporting to be drawn abroad.

36. A bill of exchange or promissory note which purports to be drawn or made out of the United Kingdom is, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, to be deemed to have been so drawn or made, although it may, in fact, have been drawn or made within the United Kingdom.

Terms upon which bills and notes may be stamped after execution.

37. (1.) Where a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty, and a penalty of forty shillings if the bill or note be not then payable according to its tenor, or of ten pounds if the same be so payable.

(2.) Except as aforesaid, no bill of exchange or promissory note shall be stamped with an impressed stamp after the execution thereof.

Penalty for issuing, &c., any unstamped bill or note.

38. (1.) Every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine

of ten pounds, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever.

(2.) Provided that if any bill of exchange payable on demand or at sight or on presentation, is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of one penny, and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill is, so far as respects the duty, to be deemed valid and available.

(3.) But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill.

39. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill. **One bill only of a set need be stamped.**

40. (1.) A bill of lading is not to be stamped after the execution thereof. **Bills of lading.**

(2.) Every person who makes or executes any bill of lading not duly stamped shall incur a fine of fifty pounds.

41. A bill of sale is not to be registered under any Act for the time being in force relating to the registration of bills of sale unless the original, duly stamped, is produced to the proper officer. **Bills of sale.**

86. (1.) For the purposes of this Act the expression "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; **Meaning of "mortgage."**

And includes—

(*a*.) Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever; and

(*b*.) Any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured; and

(*c*.) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money,

intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number; and

(*d.*) Any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security; and

(*e.*) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond, accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or property comprised in the title deeds, or for pledging or charging the same as a security; and

(*f.*) Any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland; and

(*g.*) Any deed operating as a mortgage of any stock or marketable security.

(2.) For the purpose of this Act the expression "equitable mortgage" means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting of being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property.

Provisions as to duty upon receipts.

101. (1.) For the purposes of this Act the expression "receipt" includes any note, memorandum, or writing whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

(2.) The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

Terms upon which receipts may be stamped after execution.

102. A receipt given without being stamped may be stamped with an impressed stamp upon the terms following; that is to say,

(1.) Within fourteen days after it has been given, on payment of the duty and a penalty of five pounds;

(2.) After fourteen days, but within one month, after it has been given, on payment of the duty and a penalty of ten pounds;

and shall not in any other case be stamped with an impressed stamp.

Penalty for offences in reference to receipts.

103. If any person—

(1.) Gives a receipt liable to duty and not duly stamped; or

(2.) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped; or

(3.) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid with intent to evade the duty;

he shall incur a fine of ten pounds.

112. A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the registrar of joint stock companies in England, Scotland, or Ireland, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited liability shall be delivered to the said registrar, and every such statement shall be charged with an ad valorem stamp duty of two shillings for every one hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital as the case may be.

Charge of duty on capital of limited liability companies.

113. (1.) Where by virtue of any letters patent granted by Her Majesty, or any Act, the liability of the holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the law in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or company to the commissioners within one month after the date of the letters patent or the passing of the Act; and in case of any increase of the amount of nominal share capital of any corporation or company, whether now existing or to be hereafter formed, being authorised by any letters patent or Act, a statement of the amount of such increase shall be delivered by the corporation or company to the commissioners within the like period.

Charge of duty on capital of companies with limited liability otherwise than under the Companies Acts.

(2.) The statement shall be charged with an ad valorem stamp duty of two shillings for every one hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital as the case may be, and shall be duly stamped accordingly when the same is delivered to the commissioners.

(3.) In the case of neglect to deliver such a statement as is hereby required to be delivered, the corporation or company shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect shall continue.(a)

118. (1.) No assignment of a policy of life insurance shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue for the moneys assured or secured thereby, or to give a valid discharge for the same, or any part thereof, unless the assignment is duly stamped, and no payment shall be made to

Assignment of policy of life assurance to be stamped before payment of money assured.

(a) Section 12 of the Finance Act, 1896 (59 & 60 Vict. c. 28), provides for the extension of section 113 of the Stamp Act so as to charge the like duty on a statement of any nominal share capital of any corporation or company, or of any increase of such capital where such capital or increase is authorised by an Order in Council or a certificate of a Government Department, or in any other manner.

any person claiming under any such assignment unless the same is duly stamped.

(2.) If any payment is made in contravention of this section, the stamp duty not paid upon the assignment, together with the penalty payable on stamping the same shall be a debt due to Her Majesty from the person by whom the payment is made.

EXTRACT FROM SCHEDULE I.

STAMP DUTIES ON INSTRUMENTS.

	£	s.	d.
AFFIDAVIT and STATUTORY DECLARATION	0	2	6

Exemptions.

(1.) Affidavit made for the immediate purpose of being filed, read, or used in any Court, or before any judge, master, or officer of any Court.

(2.) Affidavit or declaration made upon a requisition of the commissioners of any public board of revenue, or any of the officers acting under them, or required by law, and made before a justice of the peace.

(3.) Affidavit or declaration which may be required at the Bank of England or the Bank of Ireland to prove the death of any proprietor of any stock transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stock.

(4.) Affidavit or declaration relating to the loss, mutilation, or defacement of any bank note or bank post bill.

AGREEMENT or CONTRACT, accompanied with a deposit. See MORTGAGE, &c., and sections 23 and 86.

BANK NOTE—

		£	s.	d.
For money not exceeding 1*l.*		0	0	5
Exceeding 1*l.* and not exceeding 2*l.*		0	0	10
2*l.*	5*l.*	0	1	3
5*l.*	10*l.*	0	1	9
10*l.*	20*l.*	0	2	0
20*l.*	30*l.*	0	3	0
30*l.*	50*l.*	0	5	0
50*l.*	100*l.*	0	8	6

And see sections 29—31.

BILL OF EXCHANGE—

	£	s.	d.
Payable on demand, or at sight, or on presentation	0	0	1

And see sections 32, 34, and 38.

BILL OF EXCHANGE of any other kind whatsoever (except a bank note) and PROMISSORY NOTE of any kind whatsoever (except a bank note)—drawn, or expressed to be payable, or actually paid or endorsed, or in any manner negotiated in the United Kingdom.

		£	s.	d.
Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5*l.*		0	0	1
Exceeds 5*l.* and does not exceed 10*l.*		0	0	2
10*l.*	25*l.*	0	0	3

BILLS OF EXCHANGE—*continued.*

	£	s.	d.
Exceeds 25*l.* and does not exceed 50*l.*	0	0	6
50*l.* 75*l.*	0	0	9
75*l.* 100*l.*	0	1	0
100*l.*—			
For every 100*l.*, and also for any fractional part of 100*l.*, of such amount or value	0	1	0

Exemptions.

(1.) Bill or note issued by the Bank of England or the Bank of Ireland.

(2.) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

(3.) Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.

(4.) Letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

(5.) Draft or order drawn by the Paymaster-General on behalf of the Court of Chancery in England or by the Accountant-General of the Supreme Court of Judicature in Ireland.

(6.) Warrant or order for the payment of any annuity granted by the National Debt Commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.

(7.) Bill drawn by any person under the authority of the Admiralty, upon and payable by the Accountant-General of the Navy.

(8.) Bill drawn (according to a form prescribed by Her Majesty's orders by any person duly authorised to draw the same) upon and payable out of any public account for any pay or allowance of the army or auxiliary forces or for any other expenditure connected therewith.

(9.) Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.

(10.) Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.

(11.) Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security.

And see sections 32—39.

	£	s.	d.
BILL OF LADING of or for any goods, merchandise, or effects to be exported or carried coastwise	0	0	6
And see section 40.			
BILL OF SALE—			
Absolute. See CONVEYANCE ON SALE.			
By way of security. See MORTGAGE, &c.			
And see section 41.			
CHEQUE. See BILL OF EXCHANGE.			
CONTRACT NOTE for or relating to the sale or purchase of any stock or marketable security—			
Of the value of 5*l.* and under the value of 100*l.* ...	0	0	1
100*l.* or upwards	(*a*)0	0	6
CONVEYANCE or TRANSFER, whether on sale or otherwise—			
(1.) Of any stock of the Bank of England	0	7	9
(2.) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies—			
For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount of stock transferred	0	2	6
And see section 62.			
CONVEYANCE or TRANSFER on sale,			
Of any property (except such stock as aforesaid)—			
Where the amount or value of the consideration for the sale does not exceed 5*l.*	0	0	6
Exceeds 5*l.* and does not exceed 10*l.*	0	1	0
10*l.* 15*l.*	0	1	6
15*l.* 20*l.*	0	2	0
20*l.* 25*l.*	0	2	6
25*l.* 50*l.*	0	5	0
50*l.* 75*l.*	0	7	6
75*l.* 100*l.*	0	10	0
100*l.* 125*l.*	0	12	6
125*l.* 150*l.*	0	15	0
150*l.* 175*l.*	0	17	6
175*l.* 200*l.*	1	0	0
200*l.* 225*l.*	1	2	6
225*l.* 250*l.*	1	5	0
250*l.* 275*l.*	1	7	6
275*l.* 300*l.*	1	10	0
300*l.*			
For every 50*l.*, and also for any fractional part of 50*l.*, of such amount or value	0	5	0
And see sections 54–61.			

(*a*) Now 1*s.*, by Customs and Inland Revenue Act, 1893 (56 Vict. c. 7, s. 3). The new duty may be denoted by an adhesive stamp and added to charge for brokerage or agency.

	£	s.	d.
CONVEYANCE or TRANSFER by way of security of any property (except such stock as aforesaid), or of any security. See MORTGAGE, &c., and MARKETABLE SECURITY.			
CONVEYANCE or TRANSFER of any kind not hereinbefore described	0	10	0

EQUITABLE MORTGAGE. See MORTGAGE.

LETTER OF CREDIT. See BILL OF EXCHANGE.

MORTGAGE BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

(1.) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—

			£	s.	d.
Not exceeding 10*l.*			0	0	3
Exceeding 10*l.* and not exceeding 25*l.*			0	0	8
	25*l.*	50*l.*	0	1	3
	50*l.*	100*l.*	0	2	6
	100*l.*	150*l.*	0	3	9
	150*l.*	200*l.*	0	5	0
	200*l.*	250*l.*	0	6	3
	250*l.*	300*l.*	0	7	6
	300*l.*				
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured			0	2	6

(2.) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped.

	£	s.	d.
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured	0	0	6

(3.) Being an equitable mortgage:

	£	s.	d.
For every 100*l.*, and any fractional part of 100*l.*, of the amount secured	0	1	0

(4.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:

	£	s.	d.
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear	0	0	6

And also where any further money is added to the money already secured (the same duty as a principal security for such further money).

	£ s d.
MORTGAGE BOND, ETC.—*continued.*	
(5.) RE-CONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RE-SURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:	
For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount or value of the money at any time secured	0 0 6
And see sections 86—89.	
MORTGAGE OF STOCK or marketable security—	
Under hand only. See AGREEMENT, and section 23.	
By deed. See MORTGAGE, and section 86.	
PROMISSORY NOTE. See BANK NOTE, BILL OF EXCHANGE.	
PROTEST of any bill of exchange or promissory note:	
Where the duty on the bill or note does not exceed 1*s.* (the same duty as the bill or note).	
In any other case	0 1 0
RECEIPT given for, or upon the payment of, money amounting to 2*l.* or upwards	0 0 1

Exemptions.

(1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.

(2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.

(7.) Receipt given for any principal money or interest due on an Exchequer bill.

(9.) Receipt given upon any bill or note of the Bank of England or the Bank of Ireland.

(10.) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Secretary of State in Council of India, India, or of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively.

(11.) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.

FORGED TRANSFERS ACT, 1891.

(54 & 55 VICT. CAP. 43.)

An Act for preserving Purchasers of Stock from Losses by Forged Transfers. [5th August, 1881.]

1. (1.) Where a company or local authority issue or have issued shares, stock, or securities transferable by any instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney [whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid].(*a*) Power to make compensation for losses from forged transfer.

(2.) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred, [with a minimum charge equal to that for twenty-five pounds](*a*) to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accummulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or

(*a*) Words in brackets added by Forged Transfers Act, 1892 (55 & 56 Vict. c. 36).

local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

Definitions.

2. For the purposes of this Act—

"Company."

The expression "company" shall mean any company incorporated by or in pursuance of any Act of Parliament, or by Royal charter.

"Local authority."

The expression "local authority" shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes.

Application to industrial societies, &c.

3. This Act shall apply to any industrial, provident, friendly, benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company.

Application to harbour and conservancy authorities.

4. (1.) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company.

(2.) For the purposes of this Act the expression "harbour authority" includes all persons, being proprietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3.) For the purposes of this Act the expression "conservancy authority" includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

Application to colonial stock. 40 & 41 Vict. c. 59.

5. In the case of any colonial stock to which the Colonial Stock Act, 1877, applies, the Government of the colony of which the stock forms the whole or part of the public debt may, if they think fit, by declaration under their seal or under the signature of a person authorised by them in that behalf, and in either case deposited with the Commissioners of Inland Revenue, adopt this Act, and thereupon this Act shall apply to the colonial stock as if the registrar of the Government were a company and the stock were issued by him.

Short title.

6. This Act may be cited as the Forged Transfers Act, 1891.

RELATING TO SCOTLAND EXCLUSIVELY.

BANK NOTES PAYABLE ON DEMAND.

(5 GEO. 3, CAP. 49.)

An Act to prevent the Inconveniences arising from the present Method of issuing Notes and Bills by the Banks, Banking Companies, and Bankers, in that part of Great Britain called Scotland.

Preamble.

WHEREAS a practice has prevailed in that part of Great Britain called Scotland of issuing notes commonly called bank notes, for sums of money payable to the bearer on demand, or, in the option of the issuer or granter, payable at the end of six months with a sum equal to the legal interest from the demand to that time: and whereas notes, with such option as aforesaid, have been and are circulated in that part of the United Kingdom to a great extent, and do pass from hand to hand as specie, whereby great inconveniences have arisen: for remedy whereof be it enacted, &c., that from and after the 15th day of May, 1766, it shall not be lawful for any person or persons whatsoever, bodies politic or corporate, to issue or give, or cause to be issued or given, within that part of Great Britain called Scotland, any note, ticket, token, or other writing for money, of the nature of a bank note, circulated or to be circulated as specie, but such as shall be payable on demand, in lawful money of Great Britain, and without reserving any power or option of delaying payment thereof for any time or term whatsoever; and that from and after the said 15th day of May, 1776, all notes, tickets, tokens, or other writings for money, of the nature of a bank note, issued previous to the said day, and circulated as specie in that part of the United Kingdom, shall and they are hereby declared and adjudged to be payable on demand in lawful money aforesaid, any option, condition, or other clause therein contained to the contrary notwithstanding.

From and after 15th May, 1766, no notes to be issued in Scotland and circulated as specie but what shall be payable on demand; and notes issued and circulated as specie previously to the said day shall be payable on demand, notwithstanding any optional clause to the contrary.

2. Provided always, that nothing contained in this Act shall prevent any person or persons, bodies politic or corporate, from issuing post bills, payable seven days after sight, in the same manner as they are at present issued by the Bank of England.

Post bills payable at seven days' sight excepted;

3. All and every person or persons whatsoever, bodies politic or corporate, and the legal administrators of such person or persons, bodies politic or corporate, who shall after the said 15th May, 1766, issue or cause to be issued any note, ticket, token, or other writing for money, of the nature of a bank note, circulated or to be circulated as specie, contrary to the directions of this Act before mentioned, and to the true meaning and intent thereof, shall for every such offence forfeit and pay to the person or persons who shall inform and prosecute for the same, 500*l.* sterling, with full costs of suit, to be sued for and recovered by way of complaint before the Court of Session, upon 15 days' notice to the person or persons, bodies politic or corporate, complained of; which complaint the said Court of Session is hereby authorised and required summarily to determine without abiding the course of any roll.(*a*)

and persons acting contrary hereto forfeit 500*l.*, with full costs of suit.

(*a*) It has been thought unnecessary to print the subsequent unrepealed sections, viz., 4, 5, 6, relating to enforcing payment of these notes or orders by summary execution and method of protesting on non-payment.

BANKING COPARTNERSHIPS REGULATION ACT, 1826.

(7 GEO. 4, CAP. 67.)

An Act to regulate the mode in which certain Societies or Copartnerships for Banking in Scotland may sue and be sued.

[26th May, 1826.]

Banking copartnerships in Scotland may sue and be sued in the name of their manager, &c.

WHEREAS the practice has prevailed in Scotland of instituting societies possessing joint stocks, the shares of which are either conditionally or unconditionally transferable, for the purpose of carrying on the business of banking; and it is expedient that every such society or copartnership should be enabled to sue and be sued in the name of its manager, cashier, or other principal officer; be it therefore enacted, &c., that it shall and may be lawful for every such joint stock society or copartnership, already established, or that may hereafter be established in Scotland for the purposes of banking, to sue and be sued in the name of the manager, cashier, or other principal officer of such society or copartnership, provided that such joint stock society or copartnership shall observe the regulations prescribed by this Act.

Such societies shall yearly deliver, at the Stamp Office in Edinburgh, account, containing the name of the firm, &c.

2. Every such joint stock society or copartnership already formed shall, between the 25th day of May and the 25th day of July in this and each succeeding year, and every such joint stock society or copartnership hereafter to be formed, shall, before such joint stock society or copartnership shall begin to carry on business, and thereafter in each succeeding year, between the said 25th day of May and the 25th day of July, cause an account or return to be made out according to the form contained in the schedule marked A. to this Act annexed,(a) wherein shall be set forth the true names, title, or

(a) SCHEDULE (A.).

RETURN or account to be entered at the Stamp Office in Edinburgh, in pursuance of an Act passed in the seventh year of the reign of King George the Fourth, intituled [*here insert the title of this Act*], viz.

Firm or name of the banking society or copartnership, viz. [*set forth the firm or name*].

Names and places of abode of all the partners concerned or engaged in such society or copartnership, videlicet [*set forth all the names and places of abode*].

Names and places of the bank or banks established by such society or copartnership, videlicet [*set forth all the names and places*].

Name and description of the officer of the said banking society or copartnership in whose name such society or copartnership shall sue and be sued, videlicet [*set forth the name and description*].

Names of the several towns and places where the bills or notes of the said banking society or copartnership are to be issued by the said society or copartnership, or their agent or agents, videlicet [*set forth the names of all the towns and places*].

A. B., of , manager, or other officer [*describing the office*], of the above society or copartnership, maketh oath and saith, that the above doth contain the name, style and firm of the above society or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said society or copartnership, and the name, title and description of the officer of

firm of such intended or existing society or copartnership, and also the names and places of abode of all the members of such society, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such society or copartnership, and the name or firm of every bank or banks established or to be established by such society or copartnership, and also the name and place of abode of the manager, cashier, or other principal officer, in the name of whom such society or copartnership shall sue and be sued, as hereinafter provided, and also the name of every town and place where any of the bills or notes of such society or copartnership shall be issued by any such society or copartnership, or by their agent or agents; and every such account or return shall be delivered to the head collector of stamp duties at the stamp office in Edinburgh, who shall cause the same to be filed and kept in the stamp office there, and an entry and registry thereof to be made in a book or books to be there kept for that purpose, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of 1*s.* for every search.

Accounts to be verified on an oath.

3. Such account or return shall be made out by the officer named as aforesaid, and shall be verified by the oath of such officer taken before any justice of the peace, and which oath any justice of the peace is hereby authorised and empowered to administer, and that such account or return shall, between the 25th day of May and the 25th day of July in every year, be in like manner delivered by such officer as aforesaid to the said collector, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Certified copies of such returns to be evidence of the appointment of the public officers, &c.

4. A copy of any such account or return, so filed and kept and registered at the stamp office, as by this Act is directed, and which copy shall be certified to be a true copy, under the hand of the said collector, or of the comptroller of the stamp duties at Edinburgh, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the officer named in such account or return, and also of the fact that all persons named therein as members of such society or copartnership were members thereof at the date of such account or return.

Commissioners of Stamps to give certified copies of affidavits.

5. The said collector or comptroller for the time being shall, and he is hereby required, upon application made to him by any person or persons requiring a copy certified according to this Act, or any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he,

the said society or copartnership in whose name such society or copartnership shall sue and be sued, and the names of the towns and places where the notes of the said society or copartnership are to be issued, as the same respectively appear in the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me the day of at
in the county of

C. D., justice of the peace in and for the said county.

she, or they paying for the same the sum of ten shillings and no more.

Account of officers or members in the course of any year to be made.

6. Provided also, that the manager or other officer of every such society or copartnership shall, and he is hereby required from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the said collector as aforesaid, a further account or return according to the form contained in the schedule marked (B.) to this Act annexed,(a) of the name of any person who shall have been nominated or appointed a new or additional officer of such society or copartnership, in whose name the same shall sue and be sued, and also of the name or names of any person or persons who shall have ceased to be members of such society or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such society or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the stamp office in Edinburgh, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

Copartnerships shall sue and be

7. All actions and suits, and also all petitions to found any sequestration in Scotland, or commission of bankruptcy in England,

(a) SCHEDULE (B.).

RETURN or account to be entered at the Stamp Office in Edinburgh, on behalf of [*name the society and copartnership*], in pursuance of an Act passed in the seventh year of the reign of King George the Fourth, intituled [*insert the title of this Act*], *videlicet*,

Name of any new or additional officer of the said society or copartnership in whose name the same shall sue and be sued, *videlicet*,

A. B. in the room of *C. D.* deceased or removed [*as the case may be*].

Names of any and every person who may have ceased to be a member of such society or copartnership, *videlicet* [*set forth every name*].

Names of any and every person who may have become a new member of such society or copartnership [*set forth every name*].

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B. of manager [*or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any person who hath become or been appointed an officer of the above society or copartnership, in whose name the same may sue and be sued, and also the name and place of abode of any and every person who hath ceased to be a member of the said society or copartnership, and of any and every person who hath become a member of the said copartnership, since the registry of the said society or copartnership on the day of last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the day of at in the county of .

C. D., justice of the peace in and for the said county.

against any person or persons who may be at any time indebted to any such copartnership carrying on business under the provisions of this Act, and all proceedings at law or in equity under any sequestration or commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this Act, be commenced or instituted and prosecuted in the name of the officer named as aforesaid for the time being of such copartnership, as the nominal pursuer, plaintiff, or petitioner, for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted, and prosecuted against the officer named as aforesaid for the time being of such copartnership, as the nominal defender or defendant for and on behalf of such copartnership; and that all indictments, informations, and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such copartnership may be had, preferred, and carried on in the name of the officer named as aforesaid, for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership, against any person or persons whomsoever, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership to be the money, goods, effects, bills, notes, securities, or other property of the officer named as aforesaid, for the time being, of such copartnership; and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud the officer named as aforesaid, for the time being, of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of the officer named as aforesaid, for the time being, of such copartnership; and the death, resignation, removal, or any act of such officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against, or by or on behalf of such copartnership, but the same may be continued, prosecuted, and carried on in the name of any other manager, cashier, or other principal officer of such copartnership for the time being.

sued in the name of their officer.

Not more than one action for the recovery of one demand.

8. No person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such society or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit by or against the officer named as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand by or against such copartnership.

Decrees of a Court of equity against the officer to take effect against the copartnership.

9. All and every decree or decrees, order or orders, interlocutor or interlocutors, made or pronounced in any suit or proceeding in any Court of law or equity against the officer named as aforesaid of any such copartnership carrying on business under the provisions of this Act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties before the Court to and in any such suit or proceeding; and such order, interlocutor, and decree shall be enforced against every or any member of such copartnership, in like manner as if every such member of such copartnership was a party before such Court to and in such suit or proceeding.

Judgments against officer shall operate against the copartnership.

10. All and every judgment and judgments, decree or decrees, in any action, suit or proceedings in law or equity against the officer named as aforesaid of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of such officer for the time being of such copartnership, in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency, or stopping payment of any such officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such officer had happened or taken place.

Officer, &c., in such cases indemnified.

11. Provided always, that such officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges which such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, from the funds of the other members of such copartnership, as in the ordinary cases of copartnership.

Limiting the number

13. Provided always, that no such society or copartnership shall be obliged to take out more than four licenses for the issuing of any

promissory notes for money payable to the bearer on demand, allowed by law to be re-issued, in all, for any number of towns or places in Scotland; and in case any such society or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in Scotland, then after taking out three distinct licenses for three of such towns or places, such society or copartnership shall be entitled to have all the rest of such towns or places included in a fourth license. of licenses to be taken out for branches.

14. If any such society or copartnership, carrying on the business of bankers under the authority of this Act, shall issue any bills or notes, or to borrow or owe or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this Act, or shall neglect or omit to cause such account or return to be renewed yearly and every year between the days or times hereinbefore appointed for that purpose, such society or copartnership so offending shall, for each and every week they shall so neglect to make such account and return forfeit the sum of 500*l.*; and if any officer of such society or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this Act required to be contained or inserted in such account or return, the society or copartnership to which such officer so offending shall belong, shall for every such offence forfeit the sum of 500*l.*, and the said officer so offending shall also for every such offence forfeit the sum of 100*l.*; and if any such officer making out or signing any such account or return as aforesaid shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such officer so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

Penalty on copartnership neglecting to send returns, and penalties for making false returns.

15. All pecuniary penalties and forfeitures imposed by this Act shall and may be sued for and recovered in His Majesty's Court of Exchequer at Edinburgh, in the same manner as penalties incurred under any Act or Acts relating to stamp duties may be sued for and recovered in such Court.

Penalties, how to be recovered.

THE BANK NOTES ISSUE REGULATION ACT.

(8 & 9 VICT. CAP. 38.)(*a*)

An Act to regulate the Issue of Bank Notes in Scotland.

[21st July, 1845.]

IT shall be lawful for every *such*(*b*) banker to continue to issue his own bank notes to the extent of the amount so certified, and of the amount of gold and silver coin held by *such* banker at the head office or principal place of issue of *such* banker, in the proportion and

(*a*) Bank notes, within the meaning of this Act, are defined by 17 & 18 Vict. c. 83, s. 11.

(*b*) That is, every banker lawfully issuing notes on the 6th May, 1844. (See preamble, repealed by Statute Law Revision Act, 1891.)

manner hereinafter mentioned, but not to any further extent; it shall not be lawful for any banker to make or issue bank notes in Scotland, save and except only such bankers as shall have obtained such certificate from the Commissioners of Stamps and Taxes.

Duplicate of certificate to be published in the Gazette. Gazette to be evidence.

3. The Commissioners of Stamps and Taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding London Gazette in which the same may be conveniently inserted; and the Gazette in which such publication shall be made shall be conclusive evidence in all Courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorised to issue and to have in circulation as aforesaid, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

In case banks become united, Commissioners to certify the amount of bank notes which each bank was authorised to issue.

4. In case it shall be made to appear to the Commissioners of Stamps and Taxes, at any time hereafter, that any two or more banks have by written contract or agreement (which contract or agreement shall be produced to the said Commissioners) become united subsequently to the passing of this Act, it shall be lawful to the said Commissioners, upon the application of such united bank, to certify in manner hereinbefore mentioned the aggregate of the amount of bank notes which such separate bank were previously anthorised to issue under the separate certificates previously delivered to them, and so from time to time; and every such certificate shall be published in manner hereinbefore directed, and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such bank, as herein provided.

Issue of notes for fractional parts of a pound prohibited.

5. All bank notes to be issued or re-issued in Scotland shall be expressed to be for payment of a sum in pounds sterling, without any fractional parts of a pound; and if any banker in Scotland shall make, sign, issue, or re-issue any bank note for the fractional part of a pound sterling, or for any sum together with the fractional part of a pound sterling, every such banker so making, signing, issuing, or re-issuing any such note as aforesaid shall for each note so made, signed, issued, or re-issued forfeit or pay the sum of 20*l.*

Limitation of bank notes in circulation.

6. It shall not be lawful for any banker in Scotland to have in circulation, upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than an amount composed of the sum certified by the Commissioners of Stamps and Taxes as aforesaid and the monthly average amount of gold and silver coin held by such banker at the head office or principal place of issue of such banker during the same period of four weeks, to be ascertained in manner hereinafter mentioned.

Issuing banks to render accounts.

7. Every banker who shall issue bank notes in Scotland shall, on some one day in every week (such day to be fixed by the Commissioners of Stamps and Taxes), transmit to the said Commissioners a just and true account of the amount of bank notes of such banker in

circulation at the close of the business on the next preceding Saturday, distinguishing the notes of 5*l.* and upwards, and the notes below 5*l.*, and also an account of the total amount of gold and silver coin held by such banker at the head office or principal place of issue in Scotland of such banker at the close of business on each day of the week ending on the same Saturday, and also an account of the total amount of gold and silver coin in Scotland held by such banker at the close of business on that day; and on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circulation during the said four weeks, distinguishing the bank notes of 5*l.* and upwards and the notes below 5*l.*, and the average amount of gold and silver coin respectively held by such banker at the head office or principal place of issue in Scotland of such banker during the said four weeks, and also the amount of bank notes which such banker is, by the certificate published as aforesaid in the London Gazette, authorised to issue under the provisions of this Act; and every such account shall specify the head office or principal place of issue in Scotland of such banker, and shall be verified by the signature of such banker or his chief cashier, or in case of a company or partnership by the signature of the chief cashier or other officer duly authorised by the directors of such company or partnership, and shall be made in the form to this Act annexed marked (A.); and if such banker shall neglect or refuse to render any such account in the form and at the time required by this Act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

8. All bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker, or some servant or agent of such banker.

What shall be deemed to be bank notes in circulation.

9. From the returns so made by each banker to the Commissioners of Stamps and Taxes the said Commissioners shall, at the end of each successive period of four weeks, make out a general return in the form to this Act annexed marked (B.), of the monthly average amount of bank notes in circulation of each banker in Scotland during the last preceding four weeks, and of the average amount of all the gold and silver coin held by such banker, and certifying under the hand of any officer of the said Commissioners duly authorised for that purpose, in the case of each such banker, whether such banker has held the amount of coin required by law during the period to which the said return shall apply, and shall publish the same in the next succeeding London Gazette in which the same can be conveniently inserted.

Commissioners of Stamps and Taxes to make a monthly return.

10. For the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation, the aggregate of the amount of bank notes of each such banker in circulation at the close of the business on Saturday of each week during the period of four weeks, shall be divided by the number of weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such bank in circulation during such period of four weeks; and the monthly average amount of gold and silver coin respectively held as

Mode of ascertaining the average amount of bank notes of each banker in circulation, and gold coin, during the first

SCHEDULE (A).

Name and Title, as set forth in License.	Name of the Firm.	Head Office, or principal Place of Issue.	Amount of Circulation authorised by Certificate.	Notes in Circulation during the Week ending day of .		* Average of Four Weeks of all Notes.		Account of Coin held by the Banker at the Head Office or principal Place of Issue. on the day of .			* Average Total Amount of Coin held by the Bank during Four Weeks ending .	
				£5 and upwards.	Under £5.	£5 and upwards.	Under £5.	Gold.		Silver.	Gold.	Silver.
								£		£		
								Held on each Day of the Week preceding that Day.				
									Gold.	Silver.		
								Monday				
								Tuesday				
								Wednesday				
								Thursday				
								Friday				
								Saturday				

* To be inserted at the end of each period of four weeks.

I, being [the Banker, Chief Cashier, Managing Director *or* Partner of the Bank, *or other Officer duly authorised by the Director, as the case may be*], do hereby certify, That the above is a true Account of the Notes in Circulation and Coin held by the said Bank during the week above written.

Dated the day of 18 .

(Signed.)

SCHEDULE (B).

Name and Title, as set forth in License.	Name of the Firm.	Head Office or principal Place of Issue.	Amount of Circulation authorised by Certificate.	Average Amount of Notes in Circulation during the Four Weeks ending the day of .			Average Total Amount of Coin held during Four Weeks ending .	
				£5 and upwards.	Under £5.	Total.	Gold.	Silver.

I hereby certify, that each of the Bankers named in the above Return who have issued an amount of Notes beyond that authorised in their Certificate [with the exception of *A. B. or C. D., as the case may be*], have held an amount of Gold and Silver Coin not less than that which they are required to hold during the period to which this Return refers.

Dated

Officer of the Stamps.

aforesaid by such banker shall be ascertained in like manner from the amount of gold and silver coin held by such banker at the head office or principal place of issue in Scotland of such banker at the close of business on Saturday in each week during the same period; and the monthly average amount of bank notes of each such banker in circulation during any such period of four weeks is not to exceed a sum made up by adding the amount certified by the Commissioners of Stamps and Taxes as aforesaid and the monthly average amount of gold and silver coin held by such banker as aforesaid during the same period.

weeks after 31st December, 1845.

In taking the account of coin held by bankers, silver coin not to exceed the proportion of one fourth of gold.

11. In taking account of the coin held by any such banker as aforesaid, with respect to which bank notes to a further extent than the sum certified as aforesaid by the Commissioners of Stamps and Taxes may, under the provisions of this Act, be made and issued, no amount of silver coin exceeding one-fourth part of the gold coin held by such banker as aforesaid shall be taken into account, nor shall any banker be authorised to make and issue bank notes in Scotland, on any amount of silver coin held by such banker exceeding the proportion of one-fourth part of the gold coin held by such banker as aforesaid.

Commissioners of Stamps and Taxes empowered to cause the books of bankers containing accounts of their bank notes in circulation, and of gold coin, to be inspected.

12. All and every the book and books of any banker who shall issue bank notes under the provisions of this Act, in which shall be kept, contained or entered any account, minute or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation from time to time, or of or relating to the gold and silver coin held by such banker from time to time, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation and gold and silver coin held as directed by this Act, or to test the truth of any such account, shall be open for the inspection and examination at all seasonable times of any officer of stamp duties authorised in that behalf by writing signed by the Commissioners of Stamps and Taxes, or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid, and to inspect and ascertain the amount of any gold or silver coin held by such banker; and if any banker or other person keeping any such book, or having the custody or possession thereof or power to produce the same, shall, upon demand made by any such officer showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection and examination, or to permit him to inspect and examine the same, or to take copies thereof or extracts therefrom, or of or from any such account, minute or memorandum as aforesaid, kept, contained or entered therein, or if any banker or other person having the custody or possession of any coin belonging to such banker shall refuse to permit or prevent the inspection of such gold and silver coin as aforesaid, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l.*: Provided always, that the said Commissioners shall not exercise the powers aforesaid without the consent of the Treasury.

Penalty for refusing to allow such inspection.

All bankers to return their names

13. Every banker in Scotland who is now carrying on or shall hereafter carry on business as such, other than the Bank of Scotland,

once a year, to the Stamp Office.

the Royal Bank of Scotland, and the British Linen Company, shall, on the 1st day of January in each year, or within fifteen days thereafter, make a return to the Commissioners of Stamps and Taxes, at their head office in London, of his name, residence and occupation, or, in the case of a company or partnership, of the name, residence and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company or partnership carry on the business of banking, and of every place where such business is carried on; and if any such banker, company or partnership shall omit or refuse to make such return within fifteen days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company or partnership so offending shall forfeit or pay the sum of 50*l.*; and the said Commissioners of Stamps and Taxes shall on or before the 1st day of March in every year publish in some newspaper circulating within each town or county respectively in which the head office or principal place of issue of any such banker be situated a copy of the return so made by every banker, company or partnership carrying on the business of bankers within such town or county respectively, as the case may be.

Penalty on banks issuing in excess.

14. If the monthly average circulation of bank notes of any banker, taken in the manner herein directed, shall at any time exceed the amount which such banker is authorised to issue and to have in circulation under the provisions of this Act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorised to issue and to have in circulation as aforesaid.

Bank of England notes not a legal tender in Scotland.

Proviso.

15. Nothing in the said last recited Act contained shall extend or be construed to extend to make the tender of a note or notes of the Bank of England a legal tender in Scotland: Provided always, that nothing in this Act contained shall be construed to prohibit the circulation in Scotland of the notes of the Bank of England as heretofore.

Notes for less than 20*s.* not negotiable in Scotland.

16. All promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable for the delivery of any goods, specifying their value in money less than the sum of 20*s.* in the whole, heretofore made or issued, or which shall hereafter be made or issued in Scotland, shall be and the same are hereby declared to be absolutely void and of no effect, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; and that if any person or persons shall by any art, device, or means whatsoever, publish or utter in Scotland any such notes, bills, drafts, or engagements as aforesaid for a less sum than 20*s.*, or on which less than the sum of 20*s.* shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same in Scotland, every such person shall forfeit and pay for every such offence any sum not exceeding 20*l.* nor less than 5*l.*, at the discretion of the justice of the peace who shall hear and determine such offence.

Notes for less than 20*s*. or above, and less than 5*l*. to be drawn in certain form.(*a*)

17. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20*s*., or any sum of money above that sum and less than 5*l*., or on which 20*s*., or above that sum and less than 5*l*., shall remain undischarged, and which shall be issued within Scotland at any time after the 1st day of January, 1846, shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of twenty-one days next after the day of the date thereof, and shall not be transferable or negotiable after the time hereby limited for payment thereof, and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draft, or undertaking is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or draw in words to the purport or effect as set out in the schedules to this Act annexed marked (C.)(*b*) and (D.)(*c*); and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20*s*.; or any sum of money above that sum and less than 5*l*., or on which 20*s*., or above that sum and less than 5*l*., shall remain undischarged, and which shall be issued in Scotland at any time after the said 1st day of January, 1846, in any other manner than as aforesaid, and also every indorsement on any such note, bill, draft, or other undertaking to be negotiated under this Act, other than as aforesaid, shall and the same are hereby declared to be absolutely void, any law,

(*a*) This section is repealed so long as 26 & 27 Vict. c. 105, remains in force.

(*b*) SCHEDULE (C.)

[*Place*] [*day*] [*month*] [*year*].
Twenty-one days after date I promise to pay to *A. B.* of [*place*], or his order the sum of for value received by
Witness, *E. F.* *C. D.*

And the endorsement, toties quoties.
[*Day*] [*month*] [*year*].
Pay the contents to *G. H.* of [*place*], or his order.
Witness, *J. K.* *A. B.*

(*c*) SCHEDULE (D.)

[*Place*] [*day*] [*month*] [*year*].
Twenty-one days after date pay to *A. B.* of [*place*], or his order, the sum of value received, as advised by
To *E. F.* of [*place*]. *E. D.*
Witness, *G. H.*

And the endorsement, toties quoties.
[*Day*] [*month*] [*year*].
Pay the contents to *J. K.* of [*place*], or his order.
Witness, *L. M.* *A. B.*

statute, usage, or custom to the contrary thereof in anywise notwithstanding: Provided always, that nothing in this clause contained shall be construed to extend to any such bank notes as shall be lawfully issued by any banker in Scotland authorised by this Act to continue the issue of bank notes.(*a*)

18. If any body politic or corporate or any person or persons shall make, sign, issue, or re-issue in Scotland any promissory note payable on demand to the bearer thereof for any sum of money less than the sum of 5*l.*, except the bank notes of such bankers as are hereby authorised to continue to issue bank notes as aforesaid, then and in either of such cases every such body politic or corporate or person or persons so making, signing, issuing, or re-issuing any such promissory note as aforesaid, except as aforesaid, shall for every such note so made, signed, issued or re-issued forfeit the sum of 20*l.*

Penalty for persons, other than bankers hereby authorised, uttering or negotiating notes, bills of exchange, &c., transferable, for payment of 20*s.* or less than 5*l.*

19. If any body politic or corporate or person or persons shall publish, utter, or negotiate in Scotland any promissory or other note (not being the bank note of a banker hereby authorised to continue to issue bank notes, or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for the payment of 20*s.*, or above that sum and less than 5*l.*, or on which 20*s.*, or above that sum and less than 5*l.*, shall remain undischarged, made, drawn, or indorsed in any other manner than as is hereinbefore directed, every such body politic or corporate or person or persons so publishing, uttering, or negotiating any such promissory or other note (not being such bank note as aforesaid), bill of exchange, draft, or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l.*(*b*)

Not to prohibit checks on bankers.

20. Provided always, that nothing herein contained shall extend to prohibit any draft or order drawn by any person on his banker, or on any person acting as such banker, for the payment of money held by such banker or person to the use of the person by whom such draft or order shall be drawn.

Mode of recovering penalties.

21. All pecuniary penalties under this Act may be sued or prosecuted for and recovered in respect of any penalty not exceeding 20*l.*, by information or complaint before one or more justice or justices of the peace in Scotland, in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the Commissioners of Stamps.

Interpretation of Act.

22. In this Act the term "banker" shall extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise; and the word "person" used in this Act shall include corporations; and that the word "coin" shall mean the coin of this realm; and that the singular number in this Act shall include the plural, and the plural number the singular, except where there is any thing in the context repugnant to such construction; and that the masculine gender in this Act shall include the feminine, except where there if anything in the context repugnant to such construction.

(*a*) See note (*a*), *ante*, p. 733.

(*b*) This section is virtually (although not in fact) repealed by 26 & 27 Vict. c. 105. See note (*a*), *ante*, p. 733.

COMPOSITION FOR STAMP DUTIES PAYABLE ON NOTES AND BILLS.

(16 & 17 VICT. CAP. 63.)

An Act . . . to amend the Laws relating to Stamp Duties. [4th August, 1853.]

7. It shall be lawful for the Commissioners of Her Majesty's Treasury to compound and agree with all or any bankers in Scotland, or elsewhere, for a composition in lieu of the stamp duties payable on the promissory notes of the said bankers payable to the bearer on demand, as well as for stamps payable on their bills of exchange; and such composition shall be made on such terms and conditions, and with such security for the payment of the same, and for keeping, producing, and rendering of such accounts, as the said Commissioners may deem to be proper in that behalf; and upon such composition being entered into by such banks and bankers respectively, it shall be lawful for them to issue and re-issue all notes and to draw all such bills for which such composition shall have been made upon unstamped paper, anything in any Act contained to the contrary notwithstanding.

Power to Treasury to compound with bankers in Scotland for the stamp duties on their promissory notes.

LIEN OR RIGHT OF RETENTION OVER SHARES IN JOINT STOCK BANKS, AND SIGNING BILLS AND NOTES.

(17 & 18 VICT. CAP. 73.)

An Act to amend the Acts for the Regulation of Joint Stock Banks in Scotland. [31st July, 1854.]

1. No clause directed by the said Acts(*c*) to be inserted in the deed of partnership of any joint stock banking company in Scotland to be executed previous to such company being incorporated under the recited Acts shall take away or impair the right of retention or lien which, in virtue of the common law of Scotland, such company has or may be entitled to exercise over the shares of its partners, for or in respect of any debt or liability incurred or obligation undertaken by them to the company.

Right of retention or lien over shares of partners not to be affected.

2. Provided, that as often as the company may, in virtue of their right of lien or retention acquire any shares in the company's stock, they shall be bound to sell the same within six months after the same shall have been so acquired, and in such manner as is by the said first-recited Act provided for the sale of forfeited shares: and the company shall be bound to account to the party or parties interested in such shares, or to their creditors, or heirs, or executors, for the balance of the price or prices which may have been realised by such sale, after paying the debt due to the company, and the expenses incurred by them in securing their debt and selling the shares.

The company to sell shares acquired in virtue of right of lien.

(*c*) 7 & 8 Vict. c. 113 and 9 & 10 Vict. c. 75.

Provision to be made as to signing bills and notes.

3. In such deed of partnership there shall be inserted provisions regulating the manner in which bills of exchange or promissory notes of the company may be made, accepted, or indorsed, and it shall not be necessary that such bills of exchange or promissory notes be signed in the manner prescribed by the first-recited Act.

JOINT STOCK BANKS INCORPORATION BY LETTERS PATENT.

(19 VICT. CAP. 3.)

An Act to extend the Period for which Her Majesty may grant Letters Patent of Incorporation to Joint Stock Banks in Scotland existing before the Act of 1846. [7th March, 1846.]

Extending period for which Her Majesty may grant letters patent of incorporation to certain joint stock banks in Scotland.

1. Notwithstanding anything in the said Acts(*a*) contained, it shall be lawful for Her Majesty to grant letters patent of incorporation under the said Acts to any company of more than six persons in Scotland who were carrying on the business of bankers before the said 9th day of August, 1845, either for a term of years or in perpetuity, but so that the same shall be liable to be dealt with by or under the provisions of any future Acts of Parliament in every respect as if this Act had not been passed.

RELATING TO IRELAND EXCLUSIVELY.

CANCELLATION OF UNUSED BANK NOTES.

(55 GEO. 3, CAP. 100.)

An Act to provide for the Collection and Management of Stamp Duties payable on Bills of Exchange, Promissory Notes, Receipts, and Game Certificates in Ireland. [22nd June, 1815.]

Composition for stamps on notes of Bank of Ireland.

19. All bank notes and bank post bills, which shall be issued by the Bank of Ireland, shall be exempt from the stamp duties which may from time to time be charged thereon respectively (unless otherwise expressly provided in the Act or Acts charging the same), from every 25th day of March for one whole year next following; provided the Governor and Company of the said bank shall on the said 25th day of March respectively have paid into His Majesty's Treasury in Ireland, such sum of money as shall have been from time to time agreed upon by and between the said Governor and Company, and the Lord High Treasurer of Ireland, or the Commissioners for executing the office of Lord High Treasurer of Ireland, as a compensation for and to be in lieu of and in full satisfaction for all stamp duties payable upon all notes and bills to be issued by the said bank during the year next ensuing respectively, and that any such composition heretofore made shall be in force according to the terms thereof, as if this Act had not passed.

Cancelling notes and books of registered bankers.

20. Although any bank or banker's note or notes shall be signed or otherwise executed by any banker or bankers duly registered in manner hereinbefore mentioned, or by his or their servant or

(*a*) See note (*c*), *ante*, p. 735.

servants, yet if the same shall remain in a book and be part of the leaves, or any one leaf thereof, and not cut or separated therefrom, then and in every such case if such note or notes remaining in such book shall be brought to the stamp office in Dublin, it shall and may be lawful to and for the said Commissioners of Stamps, or any of them, or any officer by them duly authorised, and they are hereby required to cancel the stamps thereon respectively, and to mark or stamp any vellum, parchment, or paper which shall be brought to the said office by the person or persons so bringing such note or notes with any marks or stamps which he or they may require, and such person or persons paying the difference or price (if any) between the stamps so cancelled, and the stamps or marks so required to be marked or stamped on the vellum, parchment, or paper so brought to the said stamp office.

THE BANK OF IRELAND RESTRICTION ACT.

(1 & 2 GEO. 4, CAP. 72.)

An Act to establish an Agreement with the Governor and Company of the Bank of Ireland for advancing the Sum of 500,000*l. Irish Currency; and to empower the said Governor and Company to enlarge the Capital Stock or Fund of the said Bank to* 3,000,000*l.*

[2nd July, 1821.]

Persons in partnerships residing 50 miles from Dublin may borrow any sum of money on bills and notes payable on demand without being liable to penalty.

6. It shall and may be lawful for any number of persons in Ireland, united or to be united in societies or partnerships, and residing and having their establishments or houses of business at any place not less than 50 miles distant from Dublin, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, and to make and issue such notes or bills accordingly, payable on demand, at any place in Ireland exceeding the distance of 50 miles from Dublin, all the individuals composing such societies or copartnerships being liable and responsible for the due payment of such bills and notes; and such persons shall not be subject or liable to any penalty for the making or issuing such bills or notes; anything in an Act made in the Parliament of Ireland, holden in the 21st and 22nd years of the reign of His late Majesty King George the Third, intituled "An Act for establishing a bank by the name of the Governor and Company of the Bank of Ireland," to the contrary notwithstanding.

21 & 22 Geo. 3 (1).

No other privilege to be granted to partnerships.

7. Provided always, that no further or other power, privilege, or authority shall, until after payment to the said Governor and Company of all sum and sums of money which now are or hereafter shall or may become due to them from Government, be granted to any copartnership or society of persons whatsoever, contrary to the laws now in force for establishing and regulating the Bank of Ireland, save and except the power of enabling such societies and copartnerships as aforesaid, residing and carrying on their business not less than 50 miles from Dublin, to sue and be sued in the name of a public officer, should Parliament hereafter think fit to grant such a power.

THE BANKING COPARTNERSHIP REGULATION ACT.

(6 Geo. 4, Cap. 42.)

An Act for the Better Regulation of Copartnerships of certain Bankers in Ireland. [10th June, 1825.]

Societies of persons more than six in number may be bankers in Ireland at places 50 miles from Dublin, and issue bills and notes, every member being responsible.

Notwithstanding 21 & 22 Geo. 3, c. 16 (I.) or 1 & 2 Geo. 4, c. 72.

2. It shall and may be lawful for any number of persons, united or to be united in any society or copartnership in Ireland, consisting of more than six in number, and not having the establishments or houses of business of such society or copartnership at any place or places less than 50 miles distant from Dublin, to carry on the trade and business of bankers, in like manner as copartnerships of bankers, consisting of not more than six in number, may lawfully do; and to borrow, owe, or take up any sum or sums of money on their bills or notes, payable on demand, or at any time after date, or after sight, and to make and issue such notes or bills accordingly at any place in Ireland, exceeding the distance of 50 miles from Dublin, all the individuals composing such societies or copartnerships being liable and responsible for the due payment of all such bills and notes, in manner hereinafter provided; anything contained in an Act made in the Parliament of Ireland, in the 21st and 22nd years of the reign of His late Majesty King George the Third, intituled "An Act for establishing a Bank, by the name of the Governor and Company of the Bank of Ireland," or in the hereinbefore-recited Act of the 1st and 2nd years of His present Majesty's reign, or in any other Act or Acts, or any law, usage, or custom to the contrary in anywise notwithstanding.

Societies or copartnerships may appoint agents.

3. It shall and may be lawful for any such society or copartnership, from time to time to have, employ or appoint any agent or agents to do and transact, on behalf of any such society or copartnership, all such business, matters, and things as such society or copartnership may lawfully do, and as are not contrary to any Act or Acts now in force, and to the provisions of this Act.

Persons resident in Great Britain, &c., may be members of such copartnerships

5. Provided always, that nothing contained in this Act or in any other Act or Acts shall extend or be construed to prevent any person or persons whatever, whether resident in Great Britain or Ireland, from being or becoming a member or members of any such society or copartnership in Ireland as aforesaid, or from being or becoming a subscriber and contributor, or subscribers and contributors, to the stock and capital of any such society or copartnership; and that any such society or copartnership which shall or may have been formed or begun to be formed under or by virtue of the provisions contained in the hereinbefore recited Acts of the 1st and 2nd years and the 5th year of the reign of His present Majesty, and of which any person or persons shall be or shall become a member or members, or to which any such person or persons shall become a subscriber or subscribers or contributor or contributors as aforesaid, shall be or be deemed and taken, to all intents and purposes, to be a society or copartnership of persons united in Ireland, within the true intent and meaning of this Act; any thing in this Act or in and other Act or Acts of Parliament, or any law, usage, or custom to the contrary notwithstanding.

6. That between the 25th day of March in any year, and the 25th day of March following, an account or return shall be made out by the secretary or some other officer of every such society or copartnership, and shall be signed by such secretary or other officer, and shall be verified by the oath of such officer taken before any justice of the peace (and which oath any justice of the peace is hereby authorised and empowered to administer), according to the form contained in the Schedule No. 1(*a*) to this Act annexed; and in every such account or return there shall be set forth the true name or firm of such society or copartnership, and also the names and places of abode of all the partners concerned or engaged in such society or copartnership, as the same respectively appear on the books of such society or copartnership, and the firm and name of and every bank or banks established or to be established by such society or copartnership, and also the names of two or more individuals of such society or partnership who shall be resident in Ireland, each and every of whom shall respectively be considered as a public officer of such society or copartnership, and the title of office or other description of every such individual respectively, in the name of any one of whom such society or copartnership shall sue and be sued, as hereinafter provided, and also the name of every town and place where any such bills or notes shall be issued by any such society or copartnership,

Such banking partnerships shall deliver and register, at the Stamp Office in Dublin, an account of the names of the firm, the several partners therein, and the public officers thereof.

(*a*) No. 1.

RETURN or account, to be entered at the Stamp Office in Dublin, in pursuance of an Act passed in the sixth year of the reign of King George the Fourth, intituled [*here insert the title of this Act*], viz.

Firm or name of the banking society or copartnership, viz. [*set forth the firm or name*].

Names and places of abode of all the partners concerned or engaged in such society or copartnership, viz. [*set forth all the names and places of abode*].

Names and places of the bank or banks established by such society or copartnership, viz. [*set forth all the names and places*].

Names and descriptions of the public officers of the said banking society or copartnership, viz. [*set forth all the names and descriptions*].

Names of the several towns and places where the bills or notes of the said banking society or copartnership are to be issued by the said society or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places*].

A. B. of secretary [*or other officer describing the office*] of the society or copartnership, maketh oath and saith, that the above doth contain the name, style and firm of the above society or copartnership, and the names and places of abode of the several members thereof, and of the banks established by the said society or copartnership, and the names, titles, and descriptions of the public officers thereof, and the names of the towns and places where the notes of the said society or copartnership are to be issued, as the same respectively appear in the books of the said society or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of at in the county of .

C. D., justice of the peace in and for the said county.

or by any agent or agents of any such society or copartnership; and every such account or return shall be produced at the stamp office in Dublin and an entry and registry thereof shall be made in a book or books to be kept for that purpose at the said stamp office, by some person or persons to be appointed for that purpose by the Commissioners of Stamp Duties; and if, any such society or copartnership shall omit or neglect to deliver at the stamp office in Dublin such account and return as is by this Act required, such society or copartnership shall, for each and every week they shall so neglect to make such account and return, forfeit the sum of 500*l.*

Stamp Office shall give certificates of such entry, to be in force to 25th March ensuing.

7. Whenever any entry and registry of the firm or name of any such society or copartnership shall be made at the stamp office, in manner aforesaid, at any time between the 25th day of March in any year, and the 25th day of March following, a certificate of such entry or registry shall be granted by the said Commissioners of Stamps, or by some person deputed and authorised by the said Commissioners for that purpose, to the society or copartnership by or on whose behalf such entry or registry shall be made, and such certificate shall be written on vellum, parchment, or paper duly stamped with the stamp required by law for certificates to be taken out yearly by any banker or bankers in Ireland; and a separate and distinct certificate on a separate piece of vellum, parchment, or paper, with a separate and distinct stamp, shall be granted for and in respect of every town and place where any such bill or note shall be issued by any such society or copartnership, or by any agent or agents, for or on account of such society or copartnership; and every such certificate shall specify the proper firm, style, title, or name of such society or copartnership, under which such notes are to be issued, and also the name of the town or place, or the several towns or places where such notes are to be issued, and the Christian and surname and place of abode and title of office or other description of the several individuals named respectively, as the public officers of such society or copartnership in the name of any one of whom such society or copartnership shall sue and be sued; and every certificate shall be dated on the day on which the same shall be granted, and shall have effect and continue in force from the day of the date thereof, until the 25th day of March following, both inclusive, and no longer, and shall be sufficient evidence of the appointment and authority of such public officers respectively.

See *post.* p. 750, 9 Geo. 4, c. 80, s. 16.

Account and registry of new officers or members in the course of any year may be made without further certificate.

9. Provided also, that it shall and may be lawful for the secretary or other officer of any such society or copartnership, as occasion may require, from time to time, in the year ending on the 25th day of March, 1826, and in any succeeding year, without obtaining any further certificate for such year, and without payment of any further stamp duty for such year, to make out upon oath, in manner hereinbefore directed, an account or return of the name or names of any new or additional public officer or public officers, and also the name or names of any person or persons who may have ceased to be members of such society or copartnership, and also the name or names of any person or persons who may have become a member or members of such society or copartnership, either in addition to or in the place or stead of any former member or members, in the form

expressed in the schedule hereunto annexed, marked No. 2;(a) and such accounts or returns shall be from time to time produced and entered or registered at the stamp office in Dublin, in like manner as is hereinbefore required with respect to the original account or return to be made for any such year, in behalf of such society or copartnership.

Societies or partnerships shall sue and be sued in the name of their public officers.

10. All actions and suits, and also all petitions to found any sequestration, or any commission of bankruptcy, against any person or persons who may be at any time indebted to any such society or copartnership, and all proceedings at law or in equity under any sequestration or commission of bankruptcy, and all other proceedings at law and in equity, to be commenced or instituted for or on behalf of any such society or copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such society or copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such society or copartnership, or for any other matter relating to the concerns of such society or copartnership, shall and lawfully may, from and after the passing of this Act, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership, as the nominal plaintiff or petitioner for and on behalf of such society or copartnership; and that all actions or suits and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such society or copartnership or otherwise, against such society or copartnership, shall and lawfully may be commenced, instituted, and prosecuted against any one of the public officers nominated as aforesaid for the time being

(a) No. 2.

RETURN or account, to be entered at the Stamp Office in Dublin, on behalf of [*name the society or copartnership*], in pursuance of an Act passed in the sixth year of the reign of King George the Fourth, intituled [*insert the title of this Act*], viz.

Names of any and every new or additional public officer of the said society or copartnership, viz.

A. B. in the room of *C. D.* deceased or removed [*as the case may be*], [*set forth every name*].

Names of any and every person who may have ceased to be a member of such society or copartnership, viz. [*set forth every name*].

Names of any and every person who may have become a new member of such society or copartnership, [*set forth every name*].

A. B. of [*secretary or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above society or copartnership, and also the name and place of abode of any and every person who have ceased to be a member of the said society or copartnership, and of any and every person who hath become a member of the said society or copartnership since the registry of the said society or copartnership on the day of last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn, &c.

of such society or copartnership, as the nominal defendant for and on behalf of such society or copartnership; and that all indictments, informations, and prosecutions, by or on behalf of such society or copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such society or copartnership, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such society or copartnership, shall and lawfully may be had, preferred, and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such society or copartnership, against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such society or copartnership, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such society or copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and that any forgery, fraud, crime, or other offence committed against or with intent to injure or defraud such society or copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such society or copartnership, and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations or other proceedings of any kind whatsoever, in which it otherwise might or would have been been necessary to state the names of the persons composing such society or copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such society or copartnership; and the death, resignation, removal, or any act of such public officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against or by or on behalf of such society or copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of such society or copartnership for the time being.

Not more than one action for the recovery of one demand.

11. No person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such society or corporation, shall bring more than one action or suit in respect of such demand; and the proceedings in any action or suit by or against any one of the public officers nominated as aforesaid for the time being of such society or copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such society or copartnership.

Parties obtaining judgment in Ireland may authorise the acknow-

12. It shall and may be lawful for any person or persons obtaining a judgment in any of His Majesty's Courts of Record in Dublin, against any such public officer for the time being of any such society or copartnership; and such person or persons is and are hereby empowered, by warrant under hand and seal, reciting the effect of

such judgment, to authorise any attorney or attornies in Great Britain to appear for such public officer in an action of debt to be brought in any Court of Record in Great Britain against such public officer, at the suit of the person or persons obtaining such judgment in Ireland, and thereupon to confess judgment forthwith in such action for a sum equal to the sum for which judgment shall have been so obtained in Ireland, together with the costs of such proceeding; and such judgment shall be thereupon entered up on record in the said Court in Great Britain against such public officer, and shall have the like effect in Great Britain against the members of such society or copartnership as the original judgment so obtained in Ireland.

ledgment of like judgment in Great Britain.

13. It shall and may be lawful for any person or persons obtaining a judgment in any Court of law in Great Britain against any such public officer for the time being of any such society or copartnership in Ireland, and such person or persons is and are hereby empowered, by warrant under hand and seal, reciting the effect of such judgment, to authorise any attorney or attornies in Ireland to appear for such officer in an action of debt, to be brought in any Court of Record in Ireland against such public officer, at the suit of the person or persons obtaining such judgment in Great Britain, for a sum equal to the sum for which judgment shall have been so obtained in Great Britain, together with the costs of such proceeding; and such judgment shall be thereupon entered up of record in the said Court in Ireland against such public officer, and shall have the same effect in Ireland against the members of such society or copartnership as the original judgment so obtained in Great Britain.

And in like manner parties obtaining judgment in Great Britain may proceed thereon in Ireland.

14. All and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any Court of Equity, against any public officer of any such society or copartnership, shall have the like effect and operation upon and against the property and funds of such society or copartnership, and upon and against the persons and property of every member thereof, as if all the members of such society or copartnership were parties before the Court to and in any such suit or proceeding; and it shall and may be lawful for any Court in which such order or decree shall have been made to cause such order and decree to be enforced against any, every or any member of such society or copartnership, in like manner as if every member of such society or copartnership were parties before such Court, to and in such suit or proceeding.

Decrees and orders of a court of equity against the public officer to take effect against the society or copartnership.

15. An Act passed in the 41st year of the reign of King George the Third, intituled "An Act for the more speedy and effectual recovery of debts due to His Majesty, his heirs and successors, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better administration of justice within the same;" and also an Act passed in the 5th year of His present Majesty, intituled "An Act to amend an Act of the 41st year of the reign of His late Majesty King George the Third, for the more speedy and effectual recovery of debts due to His Majesty, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better administration of justice within the same," shall extend to all suits, matters and proceedings in any Court of Equity

41 Geo. 3 and 5 Geo. 4, to extend to proceedings to which the public officer shall be a party.

in England or Ireland, in which any public officer of such society or copartnership shall be a party, in like manner as if all the members of such society or copartnership were parties before the Court in such suits, matters, and proceedings.

Decrees, judgments and orders to be registered and have effect in Scotland.

16. It shall and may be lawful for any person or persons obtaining any judgment in any Court of law, or decree or order in any Court of Equity, against any public officer of any such society or copartnership, to produce an office copy of such judgment, decree or order, under the seal of the Court in which judgment, decree or order shall have been obtained, to one of the principal clerks in the Court of Session in Scotland, or his deputy, for registration there, and such judgment, decree or order shall thereupon be registrable and registered there, in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and execution may and shall pass upon a decree to be interponed thereto, in like manner as execution passes upon a decree interponed to such bond, and shall have the like effect upon and against all and every or any of the members of such society or copartnership, as if such members had executed such bond.

Judgments against such public officer in such action shall operate against the society or copartnership.

17. All and every judgment and judgments which shall at any time be had or recovered or entered up as aforesaid in any action, suit or proceedings in law or equity against any public officer of any such society or copartnership, shall have the like effect and operation upon and against the property of such society or copartnership, and upon and against the property of every member thereof, as if such judgment or judgments had been recovered or obtained against such society or copartnership themselves; and that the bankruptcy, insolvency or stopping payment of any such public officer for the time being of such society or copartnership in his individual character or capacity, shall not be nor be construed to be the bankruptcy, insolvency or stopping payment of such society or copartnership, and that such society or copartnership, and every member thereof, and the capital stock and effects of such society or copartnership, and the effects of every member of such society or copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such society or copartnership, as if no such bankruptcy, insolvency or stopping payment of such public officer of such society or copartnership had happened or taken place.

Execution upon judgment in any such action may be issued against any member of the society or copartnership.

18. Execution upon any judgment in any action obtained against any public officer for the time being, of any such society or copartnership, whether as plaintiff or defendant, may be issued against any member or members for the time being of such society or copartnership; and that in case any such execution against any member or members for the time being of such society or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having obtained judgment against such public officer for the time being, to issue execution against any person or persons who was or were a member or members of such society or copartnership at the time when the contract or contracts, or engagement or engagements on

which such judgment may have been obtained, was or were entered into: Provided always, that no such execution as last mentioned shall be issued without leave first granted, on motion in open Court, by the Court in which such judgment shall have been obtained, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such society or copartnership.

Officer, &c., in such cases indemnified.

19. Provided always, that every such public officer, in whose name any such suit or action shall have been commenced, prosecuted or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds of such society or copartnership, or in failure thereof, by contribution from the other members of such society or copartnership, as in the ordinary cases of copartnerships.

Members may be indicted for fraud on societies or copartnerships.

20. If any person or persons being a member or members of any copartnership of bankers in Ireland, shall steal or embezzle any money, goods, effects, bills, notes, securities or other property of or belonging to such society or copartnership, or shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud such society or copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding, in the name of any one of the public officers nominated for the time being of such society or copartnership, for every such fraud, forgery, crime, or offence, and may thereupon be lawfully convicted, as if such person or persons had not been, or was or were not a member or members of such society or copartnership; any law, usage, or custom to the contrary notwithstanding.

Act extended to existing partners for the time being.

21. This Act and the powers and provisions herein contained shall extend and be at all times construed to extend to any society or copartnership for banking in Ireland, consisting of more than six persons in number, and to the members thereof for the time being, during the continuance of such society or copartnership, whether the same do or shall consist of all or some only of the persons who originally were, or at the time of the passing of this Act may have subscribed to, or may be members of any such society or copartnership, or of all or some only of those persons, together with some other persons, or entirely of some other persons, all of whom became or may become members of such society or copartnership, at any time after the original institution thereof, or subsequent to the passing of this Act.

Members of societies or copartnerships may transfer shares, and such transfers shall be

22. It shall and may be lawful for any and every member of any and every such society or copartnership, their respective executors, administrators, and assigns, to sell and transfer any share or shares, or portion or portions of, or the entire stock or interest which any such member respectively is or may be respectively entitled to or possessed of in such society or copartnership, and the property and funds thereof, subject to such regulations and under such restrictions

registered at the Stamp Office; as may be required by the constitution of such society or copartnership; and whenever any such sale and transfer shall be made, a return or account thereof, in the form set forth in the Schedule, marked No. 3,(*a*) to this Act annexed, shall be made upon oath, in manner hereinbefore directed, by the secretary or other officer of such society or copartnership, and shall be from time to time produced, entered, and registered at the stamp office in Dublin, in the book containing the then last register of such society or copartnership; and the person or persons to whom such transfer shall be made shall be and stand, in all respects and to all intents and purposes, in the place and stead of the person or persons making such transfer:

but not to affect their liability while members. Provided always, that nothing herein contained shall be deemed, taken, or construed to discharge or release any member or members making any such transfer as aforesaid, of or from the being liable to or responsible for the due payment of the bills, notes, and other engagements of such society or copartnership, existing at the time of the entry or register of such transfer, or of or from any action, suit, judgment, or execution in respect of the same, according to the provisions of this Act: Provided always, that no such transfer as aforesaid shall take place without the consent of the directors for the time being of any such society or copartnership; nor shall any transfer be valid unless signed by one or more of such directors, as the Court of directors for the time being of such society or copartnership may from time to time determine, in testimony of the Court of directors having consented to such transfer.

Recovery of penalties.

24. Every penalty, forfeiture, and sum of money to be forfeited under this Act, by reason of any omission or neglect of any of the regulations hereinbefore enacted, may be sued for and recovered in any of His Majesty's Courts of Record at Dublin by any person, by action or information, provided such action be commenced within 12 calendar months next after such offence committed, and all sums to be recovered shall be applied, one moiety thereof to the use of the person who shall sue for the same, and the other moiety to the use of His Majesty.

This Act not to affect matters otherwise legal.

26. Provided always, that nothing in this Act contained shall be construed to prevent any such society or copartnership from doing any act, matter or thing which, but for the express provision of this Act, they would by law be entitled to do.

(*a*) No. 3.

RETURN or account, to be entered at the Stamp Office in Dublin, in behalf of [*name the society or copartnership*], in pursuance of an Act passed in the sixth year of King George the Fourth, intituled [*insert the title of this Act*].

C. D. of did on the day of assign shares in the said company to *G. B.* of

A. B. of secretary [*or other officer*] of the above society or copartnership, maketh oath and saith, that the assignment above mentioned has been duly made, as appears by the documents in the possession of the said .

Sworn, &c.

BANKERS' LICENSES.

(9 GEO. 4, CAP. 80.)

An Act to enable Bankers in Ireland to issue certain unstamped Promissory Notes upon Payment of a Composition in lieu of the Stamp Duties thereon.(b) [25th July, 1828.)

IT shall be lawful for any person or persons carrying on the business of a banker or bankers in Ireland, who shall have duly registered the firm of his or their house according to law, and who shall have obtained a license and given security by bond in manner hereinafter mentioned, to make and issue on unstamped paper his or their promissory notes, for payment to the bearer on demand of any sum of money not exceeding the sum of 100*l*.

Bankers in Ireland may issue certain promissory, notes on unstamped paper.

2. It shall be lawful for any two or more of the Commissioners of Stamps, or any officer of stamps duly authorised by the said Commissioners in that behalf, to grant licenses to all persons carrying on the business of bankers in Ireland who shall have duly registered the firm of their house according to law, and who shall require such licenses authorising such persons to issue such promissory notes as aforesaid on unstamped paper; which said licenses shall be and are hereby respectively charged with a stamp duty of 30*l*. for every such license.

The Commissioners of Stamps or their officers may grant licenses to issue unstamped promissory notes.

3. A separate license shall be taken out in respect of every town or place where any such unstamped promissory notes as aforesaid shall be issued: Provided always, that no person or persons shall be obliged to take out more than four licenses in all for any number of towns or places in Ireland; and in case any person or persons shall issue such unstamped notes as aforesaid at more than four different towns or places, then after taking out three distinct licenses for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in the fourth license; and that if any person or persons, after having taken out four distinct licenses under the authority of this Act, shall begin to issue such unstamped notes as aforesaid at any other town or place not named in any of the said four licenses, it shall not be necessary to include such last-mentioned town or place in any license until the 24th day of March next following the beginning to issue thereat such notes as aforesaid.

Bankers to take out a separate license for every place where unstamped notes shall be issued, but not to take out more than four licences for any number of such places.

4. Every license granted under the authority of this Act shall specify all the particulars required by law to be specified in the certificates to be taken out by persons in Ireland issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such license which shall be granted between the 24th day of March and the 25th day of April in any year, shall be dated on the 25th day of March; and every such license which shall be granted at any other time, shall be dated on the day on which the same shall be granted; and every such license shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force

Regulations respecting licenses.

(b) The composition here payable is repealed by 5 & 6 Vict. c. 82, s. 1.

from the day of the date thereof until the 24th day of March then next following, both inclusive, and no longer.

Commissioners of Stamps to cancel certificates taken out for issuing promissory notes payable to bearer on demand, and to grant licenses under this Act in lieu thereof.

5. Provided always, that where any banker or bankers shall have taken out the certificate required by law for issuing promissory notes payable to bearer on demand at any town or place in Ireland, and during the period for which such certificate shall have been granted, shall be desirous of taking out a license to issue at the same town or place unstamped promissory notes under the provisions of this Act, it shall be lawful for the Commissioners of Stamps, or their officers, to cancel and allow as spoiled the stamp upon such certificate, and in lieu thereof to grant to such banker or bankers a license under the authority of this Act; and every such license shall, during its continuance in force, also authorise the re-issuing of all promissory notes payable to the bearer on demand, which such banker or bankers may have previously issued on paper duly stamped, until the 24th day of March inclusive then next following, provided such notes may so long be lawfully re-issued.

Bankers licensed under this Act to issue all their promissory notes of payment of money to the bearer on demand on unstamped paper.

6. Provided always, that if any banker or bankers who shall take out a license under the authority of this Act, shall issue under the authority either of this or any other Act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or their promissory notes for payment of money to the bearer on demand, of whatever amount or value (not exceeding the sum of 100*l.*) such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue, for the first time, any such promissory note as aforesaid on stamped paper.

Bankers issuing unstamped notes to give security by bond for the due performance of the conditions herein contained.

7. Before any license shall be granted to any person or persons to issue any unstamped promissory notes under the authority of this Act, such person or persons shall give security by bond to His Majesty, with a condition that if such person or persons do and shall from time to time enter or cause to be entered, in a book or books to be kept for that purpose, an account of all such unstamped promissory notes as he or they shall so as aforesaid issue, specifying the amount or value thereof respectively, and the several dates of the issuing thereof, and in like manner also a similar account of all such promissory notes as, having been issued as aforesaid, shall have been cancelled, and the dates of the cancelling thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to and permit the same to be examined and inspected by the said Commissioners of Stamps, or any officer of stamps appointed under the hands and seals of the said Commissioners for that purpose; and also do and shall deliver to the said Commissioners of Stamps half-yearly (that is to say), within fourteen days after the 1st day of January and the 1st day of July in every year, a just and true account in writing, verified upon the oaths or affirmations (which any justice of the peace is hereby empowered to administer), to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant, or chief clerk, or of such of them as the said Commissioners shall require, of the amount or value of all unstamped promissory notes issued under the provisions of this

Act in circulation, within the meaning of this Act, on a given day, that is to say, on Saturday in every week, for the space of half a year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount or value of such promissory notes so in circulation according to such account; *and also do and shall pay or cause to be paid to the Receiver General of Stamp Duties in Ireland, or to some other person duly authorised by the Commissioners of Stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes issued or in circulation during such half year, the sum of* 1s. 6d. *for every* 100l., *and also for the fractional part of* 100l. *of the said average amount or value of such notes in circulation, according to the true intent and meaning of this Act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue.*(a)

8. Every unstamped promissory note issued under the provisions of this Act shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting nevertheless the period during which such note shall be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable, or, in case of copartnerships of more than six persons, which shall be in the hands of the public officers of such copartnership.

For what period notes are to be deemed in circulation.

9. In every bond to be given pursuant to the directions of this Act, the person or persons intending to issue any such unstamped promissory notes as aforesaid, or such and so many of the said persons as the Commissioners of Stamps, or their proper officer in that behalf, shall require, shall be the obligors; and every such bond shall be taken in the sum of 100l., or in such larger sums as the said Commissioners of Stamps, or such officer as aforesaid, may judge to be the probable amount of the composition or duties that will be payable from such person or persons under or by virtue of this Act during the period of one year; and it shall be lawful for the said Commissioners, or such officer as aforesaid, to fix the time or times of payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said Commissioners, or of such officer as aforesaid, and as often as the same shall be forfeited, or the parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Regulations respecting the bonds to be given pursuant to this Act.

10. If any alteration shall be made in any copartnership of persons who shall have given any such security by bond as is by this Act directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall, within one calendar month after any such alteration, be given by the remaining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as

Fresh bond to be given on alterations of copartnerships.

(a) By 5 & 6 Vict. c. 82, s. 1, this composition duty is repealed.

a security for the duties which may be due and owing, or may become due and owing in respect of the unstamped promissory notes which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped promissory notes issued or to be issued by the persons composing the new copartnership: Provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for all the duties they may incur so long as they shall exist, or the persons composing the same or any of them shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said Commissioners of Stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

Penalty on bankers refusing to renew their bonds.

11. If any person or persons, who shall have given security by bond to His Majesty in the manner hereinbefore directed, shall refuse or neglect, for the space of one calendar month, to renew such bond when forfeited, and as often as the same is by this Act required to be renewed, such person or persons so offending shall for every such offence forfeit and pay the sum of 100*l*.

This Act not to exempt from penalties any persons issuing unstamped notes not in accordance herewith.

12. Provided always, that nothing in this Act contained shall extend or be construed to extend to exempt or relieve, from the forfeitures or penalties imposed by any Act or Acts now in force upon persons issuing promissory notes not duly stamped as the law requires, any person or persons who, under any colour or pretence whatsoever, shall issue any unstamped promissory note, unless such person or persons shall be duly licensed to issue such promissory note under the provisions of this Act, and such note shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

Penalties, how and by whom to be recovered.

13. All pecuniary forfeitures and penalties which may be incurred under any of the provisions of this Act, shall be recovered for use of His Majesty, in any of His Majesty's Courts of Record, by action or information, in the name of His Majesty's Attorney or Solicitor-General in Ireland.

Not to affect the privileges of the Bank of Ireland.

14. Provided always, that nothing in this Act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the Governor and Company of the Bank of Ireland.

6 Geo. 4, c. 42.

No society or copartnership of bankers shall be obliged to take out more than

16. And whereas by an Act passed in the 6th year of the reign of his present Majesty, intituled "An Act for the better regulation of copartnerships of certain bankers in Ireland," any certificate granted by the Commissioners of Stamps in Ireland, to any society or copartnership of bankers in Ireland exceeding six in number, of the registry of the firm and name of such society, is liable to the stamp duty payable by law on certificates to be taken out yearly by any banker or bankers in Ireland, that is to say, a stamp duty of 30*l*.: and

whereas it is provided by the said recited Act, that a separate and distinct certificate, with a separate and distinct stamp, shall be granted for and in respect of every town or place where any such bills or notes as in the said Act are mentioned shall be issued by any such society or copartnership: And whereas it is expedient that no such society or copartnership should be required to take out more than four certificates in any one year, although it should issue such bills or notes as aforesaid at more than four towns or places in Ireland; be it therefore further enacted, that no society or copartnership of bankers in Ireland exceeding six in number, and carrying on the trade or business of bankers under the authority of the said recited Act, shall be obliged to take out more than four certificates in any one year of the entry and registry of the firm or name of such society or copartnership; and in case any such society or copartnership shall issue such bills or notes as aforesaid, by themselves or their agents, at more than four different towns or places in Ireland, then after taking out three distinct certificates for three of such towns or places, such society or copartnership shall be entitled to have all the remainder of such towns or places included in a fourth certificate; anything in the said Act of the sixth year of the reign of his present Majesty to the contrary notwithstanding. four certificates in one year.

17. Every certificate which hath been or shall at any time hereafter be taken out by any such last-mentioned society or copartnership as aforesaid, shall continue in force, for the issuing of such bills and notes as aforesaid at the town or place or the several towns or places therein named, until the 25th day of March next following the date of such certificate, notwithstanding any fresh entry or registry of the name or firm of such society or copartnership; and that if any fresh entry or registry shall be made from any cause whatever, after any such society or copartnership shall have taken out four such distinct certificates as aforesaid, such society or copartnership shall not be required to take out any further certificate, in respect of any town or place not included in any of such four certificates, until the 24th day of March next following such fresh entry or registry. Certificates to continue in force notwithstanding any fresh registry.

BANK NOTES PAYABLE WHERE ISSUED.

(9 GEO. 4, CAP. 81.)

An Act for making Promissory Notes payable, issued by Banks, Banking Companies, or Bankers, in Ireland, at the Places where they are issued. [25th July, 1828.]

No bank, banking company, or banker, in Ireland, shall, by themselves, or by any agent or agents, partner or partners, or other person or persons whomsoever on their or his behalf, or on their or his account, make, issue, or re-issue, in any place in Ireland where such bank, banking company, or banker shall have any house or establishment for business, or any authorised resident agent or agents, any promissory note or bank post bill of any denomination whatsoever, being or purporting to be the note or notes, bank post bill or bank post bills of the bank, banking company, or banker, making, issuing, No bankers in Ireland to issue notes which shall not express to be payable at the place where issued.

or re-issuing the same, which shall not be payable at the places respectively where the same shall be made, issued, or re-issued by or on behalf of such bank, banking company, or banker; and in every such note the place where the same shall have been issued or re-issued shall be expressly mentioned: Provided nevertheless, that if any such promissory note or bank post bill shall be issued or re-issued contrary to the provisions of this Act, the same shall nevertheless not only be valid against the bank, banking company, or banker issuing or re-issuing the same by any of the ways or means aforesaid, but such bank, banking company, or banker, shall be liable and bound to pay, in the lawful coin of the realm, double the amount of the sum specified in each such note or bank post bill (to be sued for and recovered by the holder thereof in any of His Majesty's Courts for the recovery of debts in Ireland, by action, or information), either at the place where the same shall have been issued or re-issued by or on behalf of such bank, banking company, or banker, or at any other place where such bank, banking company, or banker shall have any house or establishment for business, notwithstanding such note or bank post bill shall not be expressed to be so payable, or shall be or expressed to be otherwise payable: Provided always, that nothing herein contained shall extend to prevent any such promissory note or bank post bill from being made payable at several places, if one of such places shall be the bank or place where the same shall be so issued as aforesaid.

Notes issued contrary hereto shall be valid against the party issuing; who shall also be liable in double the amount.

Not to prevent notes being made payable at several places.

BANKING COPARTNERSHIPS REGULATION AMENDMENT ACT.

(11 GEO. 4, AND 1 WILL. 4, CAP. 32.)

An Act to explain Two Acts of His present Majesty, for establishing an Agreement with . . . . the Bank of Ireland, for advancing 500,000l. Irish Currency, and for the better Regulation of Copartnerships of certain Bankers in Ireland. [16th July, 1830.]

Copartnership bankers within a certain distance may pay their notes in Dublin.

1. It is and shall be lawful for any number of persons united or to be united in any society or copartnership in Ireland as in and by the said Acts(a) or either of them is mentioned or provided, consisting of more than six in number, and not having the establishments or houses of business of such society or copartnership at any place or places less than 50 miles of the late Irish measurement distant from Dublin, to pay in Dublin, for the purpose of withdrawing them from circulation in Dublin, or within 50 miles of the late Irish measurement thereof, by any bankers, agents, or correspondents, or any other person or persons on behalf of such society or copartnership, whether such bankers, agents, correspondents, or other person or persons shall be members or a member of such society or copartnership, any bills and notes of such society or copartnership made payable to bearer on demand, yet so nevertheless that all such bills and notes so paid in Dublin and withdrawn from circulation as aforesaid may be re-issued at the place where such bills or notes

(a) 21 & 22 Geo. 3, c. 16; 1 & 2 Geo. 4, c. 72; 6 Geo. 4, c. 42.

were originally issued: Provided always, that such bills or notes are and shall be originally issued and made payable at some place or places, specified in such bills or notes, exceeding the distance of 50 miles of the late Irish measurement from Dublin, and not elsewhere, and shall not be re-issued within 50 miles of the last Irish measurement of Dublin.

6. It shall and may be lawful to and for such societies or copartnerships from time to time, and at any times between the 25th day of March in any year and the 25th day of March in the succeeding year, to make out upon oath, and cause to be delivered to the Commissioners of Stamps, in manner mentioned in the said last-recited Act of the sixth year of the reign of King George the Fourth, a further account or return or further accounts or returns, according to the form contained in the schedule to this Act annexed,(*b*) of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such society or copartnership, or of the name of any new or additional town or towns, or place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable, or of both or either of the above matters together or separately; and such further accounts or returns shall from time to time be filed and kept and entered and registered at the stamp office in Dublin in like manner as is by the said Act of the sixth year of the reign of King George the Fourth required with respect to the original or annual account or return thereby directed to be made, and thereupon an additional certificate or additional certificates of such account and return or accounts and returns shall be granted by the persons, and in the same manner, and upon the same stamps, and containing the same particulars as in the said

Account of new officers or places of banking in the course of the year to be made out.

(*b*) SCHEDULE.

RETURN or account to be entered at the Stamp Office in Dublin, on behalf of [*name society or copartnership*], in pursuance of an Act passed in the year of the reign of King George the Fourth, intituled [*insert the title of this Act*], videlicet,

Names of any and every new or additional public officer of the said society or copartnership, videlicet,

A. B. in room of *C. D.* deceased *or* removed, *or* in addition to *C. D.* and *E. F.* [*as the case may be; set forth every name*]

Names of any additional town or place, or towns or places, where bills or notes are to be issued, and where the same are to be made payable:

[*Set forth the names.*]

A. B., of secretary [*or other officer*] of the above-named society or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of every person who hath become or been appointed a public officer of the above society or copartnership since the registry [*or* last account or return] of the said society or copartnership, on the day of last, as the same respectively appear on the books of the said society or copartnership, and to the best of the information, knowledge and belief of this deponent.

Sworn before me, the day of in the county of

C. D., justice of the peace in and for the said county.

Additional certificates to be granted.

recited Act of the sixth year of the reign of His present Majesty, particularly mentioned; and which additional certificate or certificates shall have effect and continue in force from the day of the date thereof until the 25th day of March following, and no longer, and shall be sufficient evidence of the appointment and authority of the public officers respectively.

Certfied copies of returns to be evidence of the appointment of the public officers, &c.

7. A copy of any such account or return so filed or kept and registered at the stamp office as by the said recited Act of the sixth year of the reign of His present Majesty and by this Act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the Commissioners of Stamps, or other officer or officers of the stamp office in London or Dublin for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a Commissioner or Commissioners, officer or officers, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such society or copartnership were members thereof at the date of such account or return.

Commissioners of Stamps to give certified copies of returns, on payment of 10*s*.

8. The said Commissioners of Stamps or other officers of the stamp office for the time being shall and they are hereby required, upon application made to them by any person or persons requiring a copy, certified according to this Act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of 10*s*. and no more.

Explaining the time at which societies are to make returns to the Stamp Office.

9. And whereas doubts have arisen as to the mode and times at which the societies or copartnerships authorised by the said recited Act of the sixth year of the reign of King George the Fourth, by the terms of the said Act, are required to make a return or account of the sales and transfers of their shares; be it therefore further enacted and declared, that it is and shall be the true intent and meaning of the said recited Act of the sixth year of the reign of King George the Fourth, that such societies and copartnerships are not and shall not be liable or obliged to make any return or account to the stamp office in Dublin of any sale or transfer of their shares which shall take place between the 25th day of March in any year and the 25th day of March in the succeeding year; but the said societies or copartnerships shall only be liable and obliged to make an account or return to the stamp office in Dublin once in every year in the manner and containing the particulars in the said Act mentioned.

BANKERS' LICENSES AND COMPOSITION BANK NOTES DUTY.

(5 & 6 VICT. CAP. 82.)

An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make regulations for collecting and managing the same . . .

[5th August, 1842.]

2. There shall be paid for and in respect of the promissory notes on unstamped paper issued by any licensed banker in Ireland, or such notes of such banker in circulation, the same composition as is payable by bankers in England in pursuance of an Act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to enable bankers in England to issue certain unstamped promissory notes and bills of exchange, upon payment of a composition in lieu of the stamp duties thereon;"(*a*) and the schedule(*b*) annexed to the Act passed in the fifty-fifth year of the reign of King George the Third shall, for the purposes of this Act, be read and taken and considered as if the same was annexed to and was a part of this Act, provided also, that nothing herein or in the said schedule contained shall exempt or be deemed to exempt, from any of the duties hereby charged, any of the bills or promissory notes of the Bank of Ireland, except under or by virtue of any contract or agreement authorised by the laws in force to be made between the said bank and the Treasury in that behalf.

On composition for bankers' notes the same as by 9 Geo. 4, c. 23.(*a*)

Exceptions not to extend to bills or notes of the Bank of Ireland.

REGULATION OF ISSUE OF BANK NOTES.

(8 & 9 VICT. CAP. 37.)(*c*)

An Act to regulate the Issue of Bank Notes in Ireland, and to regulate the Repayment of certain sums advanced by the . . . Bank of Ireland for the Public Service.

[21st July, 1845.]

IT shall and may be lawful for any persons exceeding six in number united or to be united in societies or partnerships, or for any bodies politic or corporate, to transact or carry on the business of bankers in Ireland at Dublin, and at every place within fifty miles thereof, as freely as persons exceeding six in number united as aforesaid may lawfully carry on the same business at any place in Ireland beyond the distance of fifty miles from Dublin: provided always, that every member of any such society, partnership, bodies politic or corporate,

Authorising certain banking copartnerships to carry on business in Dublin or within 50 miles thereof.

(*a*) See this Act, *ante*, p. 609.

(*b*) SCHEDULE to which this Act refers.

	Duty. £ s. d.
CERTIFICATE to be taken out yearly by any banker or bankers, or person or persons acting as such, of having registered the firm of his or their house according to law;	
If such banker or bankers, or other person or persons, shall issue any promissory notes for money payable to bearer on demand, and allowed to be re-issued ...	30 0 0

(*c*) Bank notes within the meaning of this Act are defined by 17 & 18 Vict. c. 83, s. 11.

shall be liable and reponsible for the due payment of all the debts and liabilities of the corporation or copartnership of which such person shall be a member, any agreement, covenant, or contract to the contrary notwithstanding.

2. The repayment of the said sum of 2,630.769*l.* 4*s.* 8*d.*, shall be and the same is hereby made chargeable upon the consolidated fund of the United Kingdom of Great Britain and Ireland until Parliament shall otherwise provide.

Bank corporation may be dissolved on notice after 1st of January, 1855.

4. Upon twelve months' notice, to be published in the Dublin Gazette by order of the Lord Lieutenant that the said corporation of the bank is to be dissolved, and upon repayment by Parliament to the Bank of Ireland, or their successors, of the said sum of 2,630,769*l.* 4*s.* 8*d.*, together with all arrears of interest or annuity due in respect thereof, then and in such case the said interest or annuity shall, from and after the expiration of twelve months after such notice published, cease and determine, and the said corporation shall be dissolved.

Bank of England notes not a legal tender in Ireland.

6. And whereas by an Act passed in the third and fourth years of the reign of His late Majesty King William the Fourth, intituled "An Act for giving to the corporation of the Governor and Company of the Bank of England certain privileges for a limited period, under certain conditions," it was enacted, that from and after the 1st day of August, 1834, unless and until Parliament should otherwise direct, a tender of a note or notes of the Bank of England expressed to be payable to bearer on demand should be a legal tender to the amount expressed in such note or notes, and should be taken to be valid as a tender to such amount for all sums above 5*l.*, on all occasions on which any tender of money may be legally made, so long as the Bank of England should continue to pay on demand their said notes in legal coin; provided always, that no such note or notes should be deemed a legal tender of payment by the Bank of England, or any branch bank of the said Governor and Company: and whereas doubts have arisen as to the extent of the said enactment; for removal whereof, be it enacted and declared, that nothing in the said last recited act contained shall extend or be construed to extend to make the tender of a note or notes of the Bank of England a legal tender in Ireland: provided also, that nothing in this Act shall be construed to prohibit the circulation in Ireland of the notes of the Bank of England as heretofore.

3 & 4 Will. 4, c. 98.

Proviso.

Oaths to be taken by directors, &c., of the Bank of Ireland.

7. It shall not be necessary for any governor, deputy governor, or director of the said bank, before acting in the said several offices or trusts, to take any other oaths than the oath of allegiance, the oath of qualification by possession of stock and the oath of fidelity to the corporation prescribed in and by the charter of incorporation of the said bank, and that it shall not be necessary for any member of the said corporation, before voting in any general court, to take any other oaths than the oaths of allegiance, the oath of qualification by the possession of stock, and the oath of fidelity to the said corporation provided in the said charter of incorporation: provided always, that in case any of the persons called Quakers shall at any time be chosen governor, deputy governor, or director, or shall be or become a member of the said corporation, it shall be sufficient for such person

or persons to make his or their solemn affirmation, to the purport and effect of the oaths prescribed by the said charter and by this Act to be taken by governors, deputy governors, directors, or members respectively of the said corporation.

8. It shall be lawful for every such banker to continue to issue his own bank notes to the extent of the amount so certified, and of the amount of the gold and silver coin held by such banker, in the proportion and manner hereinafter mentioned, but not to any further extent; and it shall not be lawful for any banker to make or issue bank notes in Ireland, save and except only such bankers as shall have obtained such certificate from the Commissioners of Stamps and Taxes.

Prohibiting issue by uncertified bankers.

9. Provided always, that if it shall be made to appear to the Commissioners of Stamps and Taxes that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said Commissioners), become united within the year next preceding such 1st day of May, 1845, it shall be lawful for the said Commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify a sum equal to the average amount of the notes of the two or more banks so united as the amount which the united bank shall thereafter be authorised to issue, subject to the regulations of this Act.

Provision for united banks.

10. The Commissioners of Stamps and Taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding Dublin Gazette in which the same may be conveniently inserted; and the Gazette in which such publication shall be made shall be conclusive evidence in all courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorised to issue and to have in circulation as aforesaid, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

Duplicate of certificate to be published in the Gazette.

Gazette to be evidence.

11. In case it shall be made to appear to the Commissioners of Stamps and Taxes at any time hereafter that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said Commissioners), become united, it shall be lawful to the said Commissioners, upon the application of such united bank, to certify, in manner hereinbefore mentioned, the aggregate of the amount of bank notes which such separate banks were previously authorised to issue under the separate certificates previously delivered to them, and so from time to time; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation, exclusive of an amount equal to the monthly average amount of the gold and silver coin held by such banker as herein provided.

In case banks become united, Commissioners to certify the amount of bank notes which each bank was authorised to issue.

12. It shall be lawful for any banker in Ireland who, under the provisions of this Act, is entitled to issue bank notes to contract and

Banks entitled to the privi-

lege of issuing notes may relinquish the same; agree with the Governor and Company of the Bank of Ireland, by an agreement in writing, for the relinquishment of the privilege of issuing such notes in favour of the said Governor and Company, and in each such case a copy of such agreement shall be transmitted to the Commissioners of Stamps and Taxes; and the said Commissioners shall thereupon certify, in manner hereinbefore mentioned, the aggregate of the amount of bank notes which the Bank of Ireland and the banker with whom such agreement shall have been made were previously authorised to issue under the separate certificates previously delivered to them; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be the limit of the amount of bank notes which the Bank of Ireland may have in circulation, exclusive of an amount equal to the amount of the gold and silver coin held by the Bank of Ireland as herein provided.

but not resume the issue.

13. It shall not be lawful for any banker who shall have so agreed to relinquish the privilege of issuing bank notes at any time thereafter to issue any such notes.

Limitation of bank notes in circulation.

14. It shall not be lawful for any banker in Ireland to have in circulation, upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than an amount composed of the sums certified by the Commissioners of Stamps and Taxes as aforesaid, and the monthly average amount of gold and silver coin held by such banker during the same period of four weeks, to be ascertained in manner hereinafter mentioned.

Issue of notes for fractional parts of a pound prohibited.

15. All bank notes to be issued or re-issued in Ireland after the 6th day of December, 1845, shall be expressed to be for payment of a sum in pounds sterling, without any fractional parts of a pound; and if any banker in Ireland shall from and after that day make, sign, issue, or re-issue any bank note for the fractional part of a pound sterling, or for any sum together with the fractional part of a pound sterling, every such banker so making, signing, issuing, or re-issuing any such note as aforesaid shall for each note so made, signed, issued, or re-issued forfeit or pay the sum of 20*l.*

Issuing banks to render accounts weekly.

16. Every banker who after the 6th day of December, 1845, shall issue bank notes in Ireland shall, on some one day in every week (such day to be fixed by the Commissioners of Stamps and Taxes), transmit to the said Commissioners a just and true account of the amount of bank notes of such banker in circulation at the close of the business on the next preceding Saturday, distinguishing the notes of 5*l.* and upwards, and the notes below 5*l.*, and also an account of the total amount of gold and silver coin held by such banker at each of the head offices or principal places of issue in Ireland of such banker at the close of business on each day of the week ending on that Saturday, and also an account of the total amount of gold and silver coin in Ireland held by such banker at the close of business on that day; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circula-

tion during the said four weeks, distinguishing the bank notes of 5*l.* and upwards, and the notes below 5*l.*, and the average amount of gold and silver coin respectively held by such banker at each of the head offices or principal places of issue in Ireland of such banker during the said four weeks, and also the amount of bank notes which such banker is, by the certificate published as aforesaid, authorised to issue under the provisions of this Act; and every such account shall be verified by the signature of such banker or his chief cashier, or in the case of a company or partnership by the signature of the chief cashier or other officer duly authorised by the directors of such company or partnership, and shall be made in the form to this Act annexed marked (A.);(*a*) and if any such banker shall neglect or

(*a*) SCHEDULE (A.).

Name and title set forth in license.............. ______________ Bank.
Name of the firm .... ______________ Firm.
Head offices or principal places of issue......... ______________ Place.
Amount of notes in circulation on Saturday, the day of . { £5 and upwards......£ / Under £5 ....£ }

Total...............£

Amount of gold and silver coin held at the head office or principal place of issue at the close of business on—

	Head Office at		Head Office at		Head Office at		Head Office at	
	Gold	Silver	Gold	Silver	Gold	Silver	Gold	Silver
Monday the								
Tuesday the								
Wednesday the								
Thursday the								
Friday the								
Saturday the								

Total amount of coin held at the close of business on Saturday, the day of , 18 .

Gold......................£
Silver ....£

Total.........£

[*To be inserted in the account at the end of each period of four weeks.*]

Amount of notes authorised by certificate ....£
Average amount of notes in circulation during the four weeks ending as above { £5 and upwards £ / Under £5 ......£ }
Average amount of coin held during the said four weeks.. { Gold ......£ / Silver......£ }
Total.........£

I being the [banker, chief cashier, director *or* partner, *as the case may be*], do hereby certify, that the above is a true account of the notes in circulation, and of the coin held by the said bank, as required under the Act 8 & 9 Vict. c. .

Signed ______________

Dated this day of , 18 .

refuse to render any such account in the form and at the time required by this Act, or shall at any time render a false account, such banker shall forfeit the sum of 100*l.* for every such offence.

What shall be deemed to be bank notes in circulation.

17. All bank notes shall be deemed to be in circulation from the time the same shall have been issued by any banker, or any servant or agent of such banker, until the same shall have been actually returned to such banker, or some servant or agent of such banker.

Commissioners of Stamps to make a monthly return.

18. From the returns so made by each banker to the Commissioners of Stamps and Taxes the said Commissioners shall, at the end of the first period of four weeks after the said 6th day of December, 1845, and so at the end of each successive period of four weeks, make out a general return in the form to this Act annexed marked (B.)(*a*) of the monthly average of bank notes in circulation of each banker in Ireland during the last preceding four weeks, and of the average amount of all the gold and silver coin held by such banker during the same period, and certifying, under the hand of any officer of the said Commissioners duly authorised for that purpose in the case of each such banker, whether such banker has held the amount of coin required by law during the period to which the said return shall apply, and shall publish the same in the next succeeding Dublin Gazette in which the same can be conveniently inserted.

Mode of ascertaining the average amount of bank notes of each banker in circulation, and gold

19. For the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation, the aggregate of the amount of bank notes of each such banker in circulation at the close of the business on the Saturday in each week during the first complete period of four weeks next after the 6th day of December, 1845, shall be divided by the number of weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such

(*a*) SCHEDULE (B).

Name and Title, as set forth in the License.	Name of the Firm.	Head Office, or principal Place of Issue.	Circulation authorised by Certificate.	Average Circulation during Four Weeks ending the			Average Amount of Coin held during Four Weeks ending		
				£5 and upwards.	Under £5.	Total.	Gold.	Silver.	Total.

I hereby certify, that each of the bankers named in the above return who have in circulation an amount of notes beyond that authorised in their certificate [with the exception of *A. B. or C. D., as the case may be,*] have held an amount of gold and silver coin not less than that which they are required to hold during the period to which this return relates.

(Signed)____________ Officer of Stamp Duties.

Dated this day of 18 .

banker in circulation during such period of four weeks, and so in each successive period of four weeks; and the monthly average amount of gold and silver coin respectively held as aforesaid by such banker shall be ascertained in like manner from the amount of gold and silver coin held by such banker at the head offices or principal places of issue of such banker in Ireland, as after mentioned, at the close of business on such day in each week; and the monthly average amount of bank notes of each such banker in circulation during any such period of four weeks is not to exceed a sum made up by adding the amount certified by the Commissioners of Stamps and Taxes as aforesaid and the monthly average amount of gold and silver coin held by such banker as aforesaid during the same period.

coin, during the first four weeks after the 6th day of December, 1845.

What shall be taken in the account of coin held by any banker.

20. In taking account of the coin held by any banker in Ireland with respect to which bank notes to a further extent than the sum certified as aforesaid by the Commissioners of Stamps and Taxes may, under the provisions of this Act, be made and issued, there shall be included only the gold and silver coin held by such banker at the several head offices or principal places of issue in Ireland of such banker, such head offices or principal places of issue not exceeding four in number, of which not more than two shall be situated in the same province; and every banker shall give notice in writing to the said Commissioners, on or before the 6th day of December next, of such head offices or principal places of issue at which the account of gold and silver coin held by him is to be taken as aforesaid; and no amount of silver coin exceeding one-fourth part of the gold coin held by such banker as aforesaid shall be taken into account, nor shall any banker be authorised to make and issue bank notes in Ireland on any amount of silver coin held by such banker exceeding the proportion of one-fourth part of the gold coin held by such banker as aforesaid.

Silver coin not to exceed the proportion of one quarter of gold.

Commissioners of Stamps and Taxes empowered to cause the books of bankers, containing accounts of their bank notes in circulation, and of gold coin, to be inspected.

21. All and every the book and books of any banker who shall issue bank notes under the provisions of this Act, in which shall be kept, contained, or entered any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such bank, of or relating to the amount of such notes in circulation from time to time, or of or relating to the gold or silver coin held by such banker from time to time, or any account, minute, or memorandum the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation and gold or silver coin held as directed by this Act, or to test the truth of any such account, shall be open for the inspection and examination at all seasonable times of any officer of stamp duties authorised in that behalf by writing signed by the Commissioners of Stamps and Taxes, or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid, and to inspect and ascertain the amount of any gold or silver coin held by such banker; and if any banker or other person keeping any such book, or having the custody or possession thereof or power to produce the same, shall, upon demand made by any such officer showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection and examination, or to permit him to inspect and examine the same, or

Penalty for refusing to allow such inspection.

to take copies thereof or extracts therefrom, or of or from any such account, minute, or memorandum as aforesaid, kept, contained, or entered therein, or if any banker or other person having the custody or possession of any coin belonging to such banker shall refuse to permit or prevent the the inspection of such gold and silver coin as aforesaid, every such banker or other person so offending shall for every such offence forfeit the sum of 100*l.* : Provided always that the said Commissioners shall not exercise the powers aforesaid without the consent of the Treasury.

All bankers to return their names once a year to the Stamp Office.

22. Every banker in Ireland, other than the Bank of Ireland, who is now carrying on or shall hereafter carry on business as such, shall, on the 1st day of January in each year, or within fifteen days thereafter, make a return to the Commissioners of Stamps and Taxes, at their office in Dublin, of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carrying on the business of banking, and of every place where such business is carried on; and if any such banker shall omit or refuse to make such return within fifteen days after the said 1st day of January, or shall wilfully make other than a true return of the persons as herein required, every banker so offending shall forfeit or pay the sum of 50*l.*; and the said Commissioners of Stamps and Taxes shall on or before the 1st day of March in every year publish in the Dublin Gazette a copy of the return so made by every banker.

Penalty on banks issuing in excess.

23. If the monthly average circulation of bank notes of any banker, taken in the manner herein directed, shall at any time exceed the amount which such banker is authorised to issue and to have in circulation under the provisions of this Act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorised to issue and to have in circulation as aforesaid.

Notes for 20*s.* and above, and less than 5*l.*, to be drawn in certain form.(*a*)

25. That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20*s.*, or any sum of money above that sum and less than 5*l.*, or on which 20*s.*, or above that sum and less than 5*l.*, shall remain undischarged, and which shall be issued within Ireland at any time after the 1st day of January, 1846, shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any days subsequent thereto, and shall be made payable within the space of twenty-one days next after the date thereof, and shall not be transferable or negotiable after the time hereby limited for payment thereof, and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draft, or undertaking

(*a*) See note (*d*), *post*, p. 763.

is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedules to this Act annexed marked (D.)(*b*) and (E.),(*c*) and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing being negotiable or transferable, for the payment of 20*s*., or any sum of money above that sum and less than 5*l*., or in which 20*s*., or above that sum and less than 5*l*., shall remain undischarged, and which shall be issued in Ireland at any time after the said 1st day of January, 1846, in any other manner than as aforesaid, and also every indorsement on any such note, bill, draft, or other undertaking to be negotiated under this Act, other than as aforesaid, shall and the same are hereby declared to be absolutely void, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding: Provided that nothing in this clause contained shall be construed to extend to any such bank notes as shall be lawfully issued by any banker in Ireland authorised by this Act to continue the issue of bank notes.(*d*)

26. If any body politic or corporate or any person or persons shall, from and after the said 1st day of January, 1846, make, sign, issue, or re-issue in Ireland any promissory note payable on demand to the bearer thereof for any sum of money less than the sum of 5*l*., except the bank notes of such bankers as are hereby authorised to continue to issue bank notes as aforesaid, then and in either of such cases every such body politic or corporate or person or persons so making, signing, issuing, or re-issuing any such promissory note as aforesaid, except as aforesaid, shall for every such note so made, signed, issued, or re-issued forfeit the sum of 20*l*.

Penalty for persons other than bankers hereby authorised issuing notes payable on demand for less than five pounds.

27. That if any body politic or corporate or person or persons shall, from and after the passing of this Act, publish, utter, or

Penalty for persons other than

(*b*) SCHEDULE (D).

[*Place*] [*day*] [*month*] [*year*]
Twenty-one days after date I promise to pay to *A. B.*, of [*place*], or his order, the sum of for value received by .
Witness, *E. F.* *C. D.*

And the indorsement, toties quoties.
[*Day*] [*month*] [*year*]
Pay the contents to *G. H.* of [*place*], or his order.
Witness, *J. K.* *A. B.*

(*c*) SCHEDULE (E).

[*Place*] [*day*] [*month*] [*year*]
Twenty-one days after date pay to *A. B.* of [*place*], or his order the sum of value received, as advised by .
To *E. F.* of [*place*]. *C. D.*
Witness, *G. H.*

And the indorsement, toties quoties.
[*Day*] [*month*] [*year*]
Pay the contents to *J. K.* of [*place*], or his order.
Witness, *L. M.* *A. B.*

(*d*) This section is repealed so long as 27 & 28 Vict. c. 20, remains in force.

bankers hereby authorised uttering or negotiating notes, bills of exchange, &c., transferable, for payment of 20s. or less than 5l.(a)

negotiate in Ireland any promissory or other note (not being the bank note of a banker hereby authorised to continue to issue bank notes), or any bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for the payment of 20s., or above that sum and less than 5l., or on which 20s., or above that sum and less than 5l., shall remain undischarged, made, drawn, or indorsed in any other manner than as is hereinbefore directed, every such body politic or corporate or person or persons so publishing, uttering, or negotiating any such promissory or other note (not being such bank note as aforesaid, bill of exchange, draft, or undertaking in writing as aforesaid), shall forfeit and pay the sum of 20l.

Not to prohibit cheques on bankers.

28. Provided always, that nothing herein contained shall extend to prohibit any draft or order drawn by any person on his banker, or on any person acting as such banker, for the payment of money held by such banker or person to the use of the person by whom such draft or order shall be drawn.

Mode of enforcing penalties.

29. All pecuniary penalties under this Act may be sued or prosecuted for and recovered for the use of Her Majesty, in the name of Her Majesty's Attorney-General or Solicitor-General in Ireland, or of the Solicitor of Stamps in Ireland, or of any person authorised to sue or prosecute for the same, by writing under the hands of the Commissioners of Stamps and Taxes, or in the name of any officer of stamp duties, by action or information in the Court of Exchequer in Dublin, or by civil bill in the Court of the recorder, chairman, or assistant barrister within whose local jurisdiction any offence shall have been committed, in respect of any such penalty, or, in respect of any penalty not exceeding 20l., by information or complaint before one or more justice or justices of the peace in Ireland, in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the Commissioners of Stamps; and it shall be lawful in all cases for the Commissioners of Stamps and Taxes, either before or after any proceedings commenced for recovery of any such penalty, to mitigate or compound any such penalty as the said Commissioners shall think fit, and to stay any such proceedings after the same shall have been commenced, and whether judgment may have been obtained for such penalty or not, on payment of part only of any such penalty, with or without costs, or on payment only of the costs incurred in such proceedings, or of any part thereof, or on such other terms as such Commissioners shall judge reasonable: Provided always, that all pecuniary penalties imposed by or incurred under this Act, by whom or in whose name soever the same shall be sued or prosecuted for or recovered, shall go and be applied to the use of Her Majesty, and shall be deemed to be and shall be accounted for as part of Her Majesty's revenue arising from stamp duties, anything in any Act contained, or any law or usage, to the contrary in anywise notwithstanding.

Companies to sue and be sued in the names of their officers.

30. Every company or copartnership of more than six persons established before the passing of this Act, for the purpose of carrying on the trade or business of bankers within the distance of 50 miles from Dublin, shall have the same powers and privileges of suing

(a) This section is repealed by implication. See note (d), *ante*, p. 763.

and being sued, and of presenting petitions to found sequestrations or fiats in bankruptcy, in the name of any one of the public officers of such company or copartnership, as the nominal plaintiff, petitioner, or defendant, on behalf of such company or copartnership, as are provided with respect to companies carrying on the said trade or business at any place in Ireland exceeding the distance of 50 miles from Dublin, under the provisions of an Act passed in the sixth year of the reign of King George the Fourth, intituled "An Act for the better regulation of copartnerships of certain bankers in Ireland;" and all judgments, decrees, and orders made and obtained in any action, suit, or other proceeding brought, instituted, or carried on by or against any such company or copartnership carrying on business within the distance of 50 miles from Dublin, in the name of their public officer, shall have the same effect and operation, and may be enforced in like manner in all respects, as is provided in and by the last-mentioned Act with respect to the judgments, decrees, and orders therein mentioned; provided that every such company or copartnership as last aforesaid shall make out and deliver from time to time to the Commissioners of Stamps and Taxes the several accounts or returns required by the last-mentioned Act; and all the provisions of the last-mentioned Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by the said last-mentioned companies, as if they had been originally included in the provisions of the last-mentioned Act. 6 Geo. 4, c. 42.

32. The term "banker" shall, when the Bank of Ireland be not specially excepted, extend and apply to the Bank of Ireland, and to all other corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise; and the word "coin" shall be construed to mean the coin of this realm; and that the word "person" used in this Act shall include corporations; and the singular number used in this Act shall include the plural number, and the plural number the singular, except where there is anything in the context repugnant to such construction; and the masculine gender in this Act shall include the feminine, except where there is anything in the context repugnant to such construction. Interpretation of Act.

STAMP DUTIES IN FORCE FOR A LIMITED PERIOD MADE PERPETUAL.

(16 & 17 VICT. CAP. 59, s. 20.)

An Act . . . . to make perpetual certain Stamp Duties in Ireland.(b)
[4th August, 1853.]

20. And whereas by an Act passed in the session of Parliament held in the 5th and 6th years of Her Majesty's reign, chapter 82, certain rates and duties, denominated stamp duties, were granted and made payable in Ireland for a limited term.

(b) The Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 99), s. 2, excepts section 20 from its operation, so far as it continues or perpetuates any enactment, which is thereby repealed.

Stamp duties in Ireland, 5 & 6 Vict. c. 82, and continued by 8 & 9 Vict. c. 2. 11 & 12 Vict. c. 9, 14 & 15 Vict. c. 18, and 15 & 16 Vict. c. 21, made perpetual.

Acts continued in force.

All the several sums of money and duties, and composition for duties granted and made payable in Ireland by the said Act of the 5th and 6th years of Her Majesty, chapter 82, and not repealed by any subsequent Act, and also all duties now payable in lieu or instead of any of the said duties which may have been so repealed, shall be and the same are hereby continued and made perpetual, and shall be charged, raised, levied, collected, and paid unto and for the use of Her Majesty. The said Act of the 5th and 6th years of Her Majesty, and all and every other Act or Acts now in force in relation to the duties and composition for duties which are continued by this Act, shall severally be continued and remain in full force in all respects in relation to the said duties and composition for duties hereby continued and granted, and all and every the powers and authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters and things contained in the said Acts or any of them, and in force as aforesaid, shall severally and respectively be duly observed, practised, applied and put in execution in relation to the said duties, and compositions for duties hereby continued and granted, for the charging, raising, levying, paying, accounting for, and securing of the said duties and composition for duties, and all arrears thereof; and for preventing, detecting and punishing of all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, forfeitures, clauses, matters and things were particularly repeated and re-enacted in the body of this Act with reference to the said duties and composition for duties hereby granted.

COMPOSITIONS FOR STAMP DUTY ON BANK POST BILLS OF 5*l.* AND UPWARDS.

(27 & 28 Vict. Cap. 86.)

An Act to permit . . . Compositions for Stamp Duty on Bank Post Bills of 5l. *and upwards in Ireland.* [29th July, 1864.]

Power to Treasury to compound with bankers in Ireland for the stamp duty on bank post bills for a period of three years.

1. It shall be lawful for the Commissioners of Her Majesty's Treasury and they are hereby authorised and empowered to compound and agree with any banker in Ireland for a composition in lieu of the stamp duties payable on the bank post bills to be made or drawn by such banker at any time, for any sum of money amounting to 5*l.* or upwards, and such composition shall be made on the like terms and conditions and with such security as the said Commissioners are by the said Act empowered to require in the case of compounding for the stamp duties on bills of exchange; and upon such composition being entered into by such banker it shall be lawful for him to make, draw, and issue all such bank post bills, for which composition shall have been made, on unstamped paper, anything in any Act contained to the contrary notwithstanding.

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London; Shaw & Sons, Fetter Lane and Crane Court, E.C.